

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO.: 1:21-CV-955

LEE MARVIN HARRIS, SR.,)
)
Plaintiff,)
)
vs.)
)
THE TOWN OF SOUTHERN PINES,)
Officer JASON PERRY, Officer SEAN)
LOWERY, and Officer KYLE MARSH,)
sued in their individual)
capacities, and Chief of Police)
ROBERT TEMME, sued in his official)
and individual capacity,)
)
Defendants.)
_____)

D E P O S I T I O N

OF

KYLE ALAN MARSH

At Southern Pines, North Carolina

Tuesday, September 20, 2022

REPORTER: WANDA B. CONSTANTINO, CVR-CM-M
Notary Public

REED & ASSOCIATES
MATTHEWS, NORTH CAROLINA 980.339.3575

A P P E A R I N G

On Behalf of the Plaintiff:

Mr. Abraham Rubert-Schewel
Mr. Nichad Davis
TIN, FULTON, WALKER & OWEN, PLLC
119 East Main Street
Durham, North Carolina 27701
Phone: 919-451-9216
schewel@tinfulton.com
ndavis@tinfulton.com

On Behalf of the Defendants:

Mr. Glenn Jones
HALL, BOOTH & SMITH, PC
Suite 750
11215 North Community House Road
Charlotte, North Carolina 28277
Phone: 980-859-0380
gjones@hallboothsmith.com

In Attendance:

Mr. Lee Marvin Harris, Sr.
Officer Jason S. Perry

* * * * *

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MATTHEWS, NORTH CAROLINA 980.339.3575

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1 This is the deposition of KYLE ALAN MARSH,
2 taken in accordance with the Federal Rules of Civil
3 Procedure in connection with the above case.

4 Pursuant to Agreement, this deposition is
5 being taken at the Southern Pines Finance Building,
6 180 Southwest Broad Street, Southern Pines, North
7 Carolina, beginning at 10:06 a.m. on Tuesday,
8 September 20, 2022, before Wanda B. Constantino, Certified
9 Verbatim Reporter and Notary Public.

10

11 KYLE ALAN MARSH, upon first being duly sworn,
12 testified as follows:

13

14 EXAMINATION BY MR. RUBERT-SCHEWEL

15 Q. My name is Abraham Rubert-Schewel. I'm with the law
16 firm of Tin Fulton Walker & Owen. We represent Lee
17 Harris, Sr., in this lawsuit against the Town of
18 Southern Pines and the individually named officers
19 such as yourself.

20 I have my Zoom rules written down here, but
21 we're not on Zoom anymore.

22 (General laughter.)

23 Q. You understand that you are testifying under oath
24 today under the penalty of perjury?

25 A. I do.

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1 Q. Have you ever been deposed before?

2 A. Deposed, no.

3 Q. Have you ever been a party to a lawsuit?

4 A. No.

5 Q. These questions and answers are being transcribed by
6 a court reporter, meaning it is very important that
7 you speak loudly and clearly. Do you understand?

8 A. I understand.

9 Q. You must answer questions verbally, for example,
10 using yes or no, not phrases such as "uh-huh" or
11 "huh-uh."

12 A. Yes, sir.

13 Q. Your attorney, Glenn, may object to certain questions
14 that I ask. You should know that you are still
15 required to answer every question unless instructed
16 not to, which should happen rarely. Otherwise,
17 you're required to answer each question truthfully
18 and completely as possible. Do you understand?

19 A. If there were to be an objection -- can -- can you
20 read that again?

21 Q. Your attorney may object to certain questions that I
22 ask.

23 A. Uh-huh.

24 Q. You should know that you are still required to answer
25 every question unless instructed not to.

1 A. Who would that instruction of not to come from?

2 Q. Your counsel.

3 A. Okay.

4 Q. And if there is an objection, you can always pause
5 and --

6 A. Gotcha.

7 Q. -- he will tell you.

8 A. Okay. I understand.

9 Q. Please state and spell your name for the record.

10 A. Kyle Marsh. K-y-l-e M-a-r-s-h.

11 Q. And what year did you become a police officer?

12 A. July 9th, 2001.

13 Q. And what was the first department that you worked in?

14 A. Southern Pines.

15 Q. Have you ever worked in any other departments?

16 A. Yes. From July 2006 to November 2013, I worked for
17 the Moore County Sheriff's Office.

18 Q. Who was the sheriff at that time?

19 A. Sheriff Lane Carter was the sheriff in 2006. He
20 retired in May of 2013. Neil Godfrey was appointed
21 sheriff in May of 2013, and he was the sheriff when I
22 left.

23 Q. Is he the current sheriff?

24 A. No.

25 Q. Who is the current sheriff?

1 A. Ronnie Fields.

2 Q. Okay. And I believe that your current job title is
3 Administrative Captain?

4 A. Correct.

5 Q. And you are in charge of administration and
6 communications?

7 A. Yes.

8 Q. Any -- anything that I missed?

9 A. So the administration, we have two captains:
10 Operations Captain and Administration Captain. I
11 oversee the Communications Center, property and
12 evidence, the building, training, and Internal
13 Affairs.

14 Q. Who is the other captain?

15 A. Robert Heaton. He's the operations captain.

16 Q. So as Administrative Captain, your responsibilities
17 are training, Internal Affairs, and what -- what was
18 the last item that you said?

19 A. Property and evidence. Now, I'm not a property and
20 evidence custodian, but the Property and Evidence
21 Division does fall under my command.

22 Q. Okay.

23 A. And you have Communications?

24 Q. I do.

25 A. Yeah. We have a Communications Center.

1 Q. Okay. And so I guess let's just go through those.

2 Internal Affairs: What is your role in the Internal
3 Affairs Division?

4 A. At -- so for Internal Affairs, if I am -- a complaint
5 comes in for a policy violation, you know, the
6 supervisor -- watch commander, if you will, or the
7 supervisor for that team or division would forward
8 the complaint to me and then I would investigate that
9 Internal Affairs complaint, the -- the allegation of
10 a policy violation or something of that nature.

11 Q. Okay. And is it your responsibility to determine if
12 a violation occurred?

13 A. I make a recommendation. I look into the complaint.
14 If -- you know, if I find that it has, you know,
15 violated a policy, then, you know, I can make a
16 recommendation, but the final say-so falls with the
17 Chief of Police.

18 Q. Okay. And was there an Internal Affairs
19 investigation related to Lee Harris, Sr.'s, case?

20 A. What do you mean to a --

21 Q. Well, to this case that we're here for today --

22 A. No.

23 Q. -- was there an Internal Affairs investigation to
24 your knowledge?

25 A. Not that I'm aware of.

1 Q. Okay. And there's currently not one today?

2 A. I'm unaware if there's a -- I -- I should be made
3 aware.

4 Q. You -- you would know.

5 A. Not -- well, at being named as a party in a suit, I
6 mean, I -- I wouldn't be in charge of investigating
7 my own case.

8 Q. Okay.

9 A. However, you know, if there's allegations of, like, a
10 policy violation -- (clearing throat) -- excuse me,
11 or something like that, I would be advised of, like,
12 my Garrity rights or -- or something to -- to that
13 effect, but I'm not aware of any Internal Affairs
14 investigation.

15 Q. Okay. So you're saying if there was one, you would
16 have recused yourself or you would have been taken
17 off the --

18 A. I -- I wouldn't --

19 Q. -- the investigation.

20 A. -- have had the opportunity to. So the -- the Chief
21 of Police -- and I've only been doing internal
22 investigations since October of 2020, I believe. You
23 know, if -- if I'm a party to it, he -- I wouldn't
24 have any access to -- to anything or -- or anything
25 like that.

1 Q. Okay.

2 A. You know, he could designate himself the outside
3 person or deputy chief to -- to conduct those.

4 Q. Okay. But as far as you know, there's no internal
5 investigation of any sort that is being done related
6 to this lawsuit.

7 A. Not that I'm aware of.

8 Q. Okay.

9 A. Now, could there have been an administrative review
10 opened or something like that? It's possible, but
11 not with my -- you know, not to my knowledge.

12 Q. But -- and Chief Polidori would be the one who would
13 know that?

14 A. Yes.

15 Q. And I -- I apologize if I mispronounce any names.
16 Are you in charge of personnel?

17 A. In -- in what way?

18 Q. Well, I guess personnel over the -- I mean, you
19 oversee, it sounds like, a number of different
20 divisions.

21 A. Uh-huh.

22 Q. Are you in charge of personnel within your divisions?

23 A. Within my divisions, yes.

24 Q. I'm going to ask you a number of names of officers,
25 and I just want you to tell me if they're still at

1 Southern Pines Police --

2 A. Sure.

3 Q. -- Police Department. Victoria Price?

4 A. No longer.

5 Q. Christopher Garner?

6 A. No longer.

7 Q. Brian Edwards?

8 A. Yes, he's still there; not under my command.

9 Q. Do you know why Ms. Price left?

10 A. She was a civilian employee, a part-time civilian
11 employee for the Town of Southern Pines. She is now
12 a sworn deputy sheriff with the Moore County
13 Sheriff's Office full time.

14 Q. Okay. And how about Mr. Garner?

15 A. He's a -- I believe his rank is corporal with the
16 sheriff's office. He previously worked there and
17 he's went back to work at the sheriff's office.

18 Q. Okay. So let's -- how about Communications? What
19 does the Communications Division do at Southern
20 Pines?

21 A. So, you know, they answer 911 calls --

22 (Mr. Davis sneezed.)

23 THE WITNESS: Bless you.

24 MR. RUBERT-SCHEWEL: Bless you.

25 MR. DAVIS: Thank you.

- 1 A. -- that are forwarded from Moore Central in Carthage,
2 so we're not a true 911 center. However, we do have
3 our own center to dispatch police only. So they
4 don't do fire, EMS, or anything like that. So if
5 someone calls 911 for an emergency in the town limits
6 of Southern Pines, they'll be transferred to our
7 center and then they will dispatch our cars.
- 8 BY MR. RUBERT-SCHEWEL:
- 9 Q. Okay. And what about -- in -- well, are those
10 communications recorded?
- 11 A. Yes.
- 12 Q. How --
- 13 A. When -- you're saying like those communications like
14 phone and radio traffic?
- 15 Q. Yes.
- 16 A. Yes.
- 17 Q. And by -- and -- and so phone traffic we mean 9- --
18 911 calls, and I understand that you're not a 911
19 center, but they're transferred to Southern Pines --
- 20 A. Yes.
- 21 Q. -- and you have a Communications Center.
- 22 A. Correct.
- 23 Q. How many people work in that Communications Center?
- 24 A. Now we have seven full-time employees. We have a
25 communications supervisor and six telecommunicators.

1 Q. And these 911 calls or radio traffic, are those
2 recorded?

3 A. Yes.

4 Q. And how long are those kept for in the ordinary
5 course of business?

6 A. I do not know.

7 Q. And by radio traffic, that also would include if an
8 officer responds to the Communications Center?

9 A. Yes.

10 Q. And what type of things would an officer respond to a
11 Communications Center, get in contact with the
12 Communications Center about?

13 A. Arriving to calls; clearing calls for service;
14 calling in, you know, things that they run across
15 that they don't have -- you know, emergency
16 situations, calling for help; you know, things of
17 that nature.

18 Q. What about if -- would they ever call the
19 Communications Center to request certain types of
20 information --

21 A. Sure.

22 Q. -- to like a -- run somebody's background?

23 A. Sure.

24 Q. And how does the Communications Center assist with
25 that? Is it they have, I assume, computers in front

1 of them and they can look that up, or --

2 A. Yes.

3 Q. -- how does that work?

4 A. They have a -- what's called a DCI, Division of
5 Criminal Information terminals --

6 Q. Okay.

7 A. -- that can access state and federal databases. They
8 can run driver's license, vehicle registrations,
9 wanted -- stolen articles, items, persons, missing
10 persons, and they can also enter those same thing --
11 same things. So stalling -- stolen vehicles, stolen
12 items, missing persons, wanted persons. They -- they
13 can also enter those -- those things.

14 Q. Okay. And do you have a computer in -- in your squad
15 car?

16 A. In my car, no. I have one in my office.

17 Q. In your office.

18 A. Yes.

19 Q. What about detectives with the Southern Pines Police
20 Department? Will they have computers in their squad
21 cars?

22 A. There's only -- so that's another one of the things I
23 do is -- now is the fleet, order cars and things of
24 that nature. I -- there's not many investigations
25 vehicles that have what -- MDTs. So mobile data

1 terminal -- terminal. There's not many of those that
2 have those types of stands. Now, having said that,
3 they're all issued laptops. They're all issued --
4 today, they're all issued hotspots so they can -- can
5 take it mobile. But more often than not, they --
6 they don't.

7 Q. Okay. So if the Communications Center -- if you call
8 in for information and they want to give you, let's
9 say, an offender's or a suspect's background, their
10 arrest history, will they convey that to you over the
11 phone and say, "Oh, he's got priors for this, this,
12 and that," or is that something they'll send you on
13 your iPhone? How -- how will that information be
14 conveyed to you?

15 A. That -- so you really don't want to try to tie up the
16 radio communications for -- you don't want to be
17 talking about something that's non-emergency when an
18 emergency could be taking place, so a lot of times
19 that could take place by phone.

20 Q. Okay. So usually it's just by phone. Is there ever
21 a situation where an officer has their laptop in
22 their car and that -- that information will be
23 conveyed to them on their laptop?

24 A. As sent from the Communications Center?

25 Q. Sure.

1 A. It could be added to a call. Now, officers, in their
2 vehicles, any of the -- the laptops, they do not have
3 full access to DCI like they do in Communications.

4 Q. Okay.

5 A. Now, on their CAD program, information can be placed
6 from DCI into the CAD system, which would allow the
7 officers to pull that call up that they're on to --
8 to view information. That is a possibility.

9 Q. And is that what then creates an event report?

10 A. An event report is -- a CAD report/event report, I
11 think, could be viewed one and the same.

12 Q. Okay. And could you just summarize again what that
13 is for me, a CAD report and an event report?

14 A. A call -- it's a call for service.

15 Q. A call for service.

16 A. So any -- any type of call for service. It could be
17 a citizen contact or, you know, a motor vehicle
18 accident. It could be a traffic stop. It creates a
19 call for service.

20 Q. Okay. In 2018, what was your role with the Southern
21 Pines Police Department?

22 A. I was lieutenant of the Investigations Division.

23 Q. And at that point were you assigned your own squad
24 car?

25 A. Yes.

1 Q. And in your squad car, did you have a laptop?

2 A. In my squad car, no. I do believe I had a mount at
3 the car. I'm trying to remember what car I had then.
4 I didn't have one permanently assigned to the car,
5 but I did have a laptop assigned to me. So if I
6 wanted to take it in the car, I could.

7 Q. Okay.

8 A. But --

9 Q. I see.

10 A. Yeah. But during that time, too, we didn't have, you
11 know, the mobile hotspots that we have now. A lot of
12 times it would be tethered to your work phone. And
13 when you start talking about running the programs
14 that we ran, especially during that time, our records
15 management system -- the bandwidth for a cellular
16 connection just wasn't strong enough. So it was --
17 almost rendered it useless in the field.

18 Q. So if it's tethered to your work phone, how do you
19 get Wi-Fi on your laptop?

20 A. Through the work -- that's what I mean.

21 Q. So it's like a physical -- you attach it?

22 A. No, no. Just create the mobile hotspot.

23 Q. Mobile hotspot. Okay, I gotcha. Oh. And then now
24 you actually have, like, these, you know --

25 A. Yeah.

1 Q. -- yeah, okay, I gotcha -- physical hotspots that are
2 smaller devices --

3 A. We've advanced a little bit.

4 Q. -- are no longer on your phones.

5 A. Yeah, correct.

6 Q. I used to lose my cell phone, so -- okay. So in
7 2018, it is -- well, was it your practice to bring
8 your laptop with you in your car?

9 A. Not always. For a patrol officer out here working a
10 beat, yes. They -- you know, they're -- they're
11 married to their laptops in their car.

12 Q. Okay.

13 A. In my position then and even more so -- well,
14 definitely more so now, I'm in the office more than I
15 am anywhere, so I wouldn't -- you know, I would take
16 my laptop home from time to time, but every time I
17 went and got in the car, no.

18 Q. Okay. And let me just back up. The other divisions
19 you said you're in charge of are Training and
20 Property and Evidence. What is your role in
21 Training?

22 A. I'm the in-service training coordinator, so annually
23 all sworn officers and telecommunicators are required
24 to take, you know, X number of -- of training hours
25 that the Justice -- or that the Training and

1 Standards requires to maintain certification. I
2 ensure that those classes are administered.

3 Most of the training today is -- is online
4 with the Justice Academy now, but there are some
5 in-person classes. For example, firearms. I'm the
6 lead firearms instructor, and I teach that every
7 year.

8 Q. Okay. Do you -- are -- are officers required to take
9 or receive any training related to arrest?

10 A. I don't know that I --

11 Q. Let me -- let me --

12 A. -- completely understand your question.

13 Q. -- let me withdraw that question, then. Are they --
14 are they required to take or receive any training
15 related to investigations?

16 A. It's kind of a broad question, but, you know, in
17 Basic Law Enforcement Training, all officers to be
18 certified as a police officer, you must attend Basic
19 Law Enforcement Training. That -- you know, I don't
20 know what the hours of that are today; somewhere
21 probably north of 800 hours.

22 When I went through 21 years ago,
23 approximately 600 hours, but part of the Basic Law
24 Enforcement Training is, you know, criminal
25 investigations, arrest, search and seizure,

1 constitutional law. You know, there's quite a bit of
2 training that takes place in that -- in that Academy.

3 Q. What about when you become a detective or when you
4 become a member, I guess, of the Investigations
5 Division? Do you receive additional training at that
6 point?

7 A. So we actually have, just like we do for patrol
8 officers, a field training evaluation program. We
9 have an investigations training and evaluation
10 program where there is a -- a manual that is provided
11 to -- to the trainee, to the newly appointed
12 detective, or whatever the case may be. That's --
13 that's assigned to them in different aspects of the
14 division that have to be signed off on by a training
15 officer and -- and by the newly appointed
16 investigator.

17 Outside training -- I think, and I don't want
18 to assume, but I'm -- I'm assuming you're asking for
19 additional training above and beyond a basic academy?
20 So those -- those classes are encouraged. We have a
21 career development program, so our when -- when
22 someone is hired straight out of an academy, they're
23 considered a police officer trainee. From there they
24 can go to a Police Officer I, Police Officer II,
25 Master Patrol Officer, and then they stay at that

1 until, you know, anything above master patrol officer
2 is -- it starts with sergeant, and those are done by
3 assessment centers.

4 The Career Development Program requires you to
5 obtain certain courses or a category of courses to
6 advance to the next rank, and also time is a factor.
7 There is a police officer track and there is an
8 investigations track. It's -- an investigator is a
9 lateral transfer. It's not a promotion. It's a
10 lateral transfer. So someone who is, you know, goes
11 to Investigation and their rank at the time is a
12 Police Officer I, then they would be taking more
13 investigative courses to obtain Police Officer II and
14 Master Patrol Officer in the Investigations side of
15 the house, if you will.

16 Q. Okay.

17 A. But, yes. To answer your question, it -- these, you
18 know, courses are, you know, encouraged. And, you
19 know, outside training, we -- you know, we -- we
20 promote that.

21 Q. And the manual that's provided to newly appointed
22 officers in the investigating division, how many
23 pages is that manual?

24 A. I don't have an answer for that.

25 Q. Okay. When was that manual -- was -- was that manual

1 in effect in 2017?

2 A. Yes.

3 MR. RUBERT-SCHEWEL: Glenn, I don't know if we
4 received that manual, but if not, we'll
5 make a request for that. And Nichad, if
6 you could make a note for that.

7 MR. JONES: Sure. And I -- I -- I don't think
8 I've seen it, so I --

9 MR. RUBERT-SCHEWEL: Yeah.

10 MR. JONES: -- would imagine --

11 MR. RUBERT-SCHEWEL: We'll -- we'll follow up.

12 MR. JONES: Yeah.

13 MR. RUBERT-SCHEWEL: Yeah.

14 BY MR. RUBERT-SCHEWEL:.

15 Q. Does that manual discuss things such as probable
16 cause?

17 A. I don't recall if probable cause is specifically
18 mentioned. I wouldn't have seen one of these manuals
19 page by page since probably 2014 when I went to
20 Investigations.

21 Q. Okay. So you don't train new members of the
22 Investigative Division on that manual yourself.

23 A. No. I don't recall if I ever did.

24 Q. Is there any officer whose responsibility that is?

25 A. So like today, nearly all the investigators are field

1 training officers, so -- and the way we try to do it,
2 we try not to assign you to one person. We try to
3 assign you to multiple people so you can see all
4 different people do the same thing. You can get
5 different perspectives, if you will. So I -- I don't
6 recall when I was in Investigations if I trained
7 anyone, specifically one-on-one.

8 Q. Okay.

9 A. Now, I would have reviewed to make sure everything
10 was checked off on in the manual, things of that
11 nature. There may have been specific parts that --
12 that I would cover. The -- I don't have a good
13 answer for you on that.

14 Q. Okay. And a field training officer, does that
15 actually mean that they are training someone
16 one-on-one in the field?

17 A. Yes.

18 Q. Okay. And is -- as part of field training, are there
19 specific guidelines for that?

20 A. Yeah. The manual itself.

21 Q. The manual itself. Okay.

22 A. We also have a general order that covers field
23 training evaluation program and investigations
24 training evaluation program and communications
25 training and evaluation program.

1 Q. Okay. Does the manual cover drug investigations?

2 A. The investigations manual, in addition to the field
3 training manual for police officers, I do believe
4 there is a section that deals with talking about drug
5 investigations with confidential informants and
6 things of that nature.

7 Q. To your knowledge, do Southern Pines police officers
8 receive any training related to probable cause for an
9 arrest?

10 A. Yes.

11 Q. And with that training, is that in Basic Law
12 Enforcement Training, or does it happen at some other
13 time?

14 A. The -- the foundation is laid during Basic Law
15 Enforcement Training in great detail. The Farb book
16 is used for that class for arrest, search, and
17 seizure, and -- and in addition to that, you know,
18 officers are encouraged to attend Police Law
19 Institute.

20 During that time whenever I was over the
21 Investigations Division, I can't say with certainty,
22 but most of those officers had attended Police Law
23 Institute, which is a 86-hour course, I believe. At
24 least a two-week course through the North Carolina
25 Justice Academy is still offered today. That teaches

1 you the bare bones of writing search warrants,
2 probable cause, and it -- it just delves in much
3 deeper to arrest, search, and seizure than, you know,
4 a lot of other courses do.

5 But in addition to that, I mean, there are a
6 lot of other courses that -- that are encouraged and
7 -- and officers take and investigators take dealing
8 with drug investigations and interview and
9 interrogation, things of that nature.

10 Q. At Basic Law Enforcement Training or -- or any other
11 time, are officers taught about the idea of
12 constructive possession?

13 A. I -- it's been so long since I've went to Basic Law
14 Enforcement Training, I -- I don't recall every
15 aspect of it.

16 Q. Okay. To your knowledge, is there a policy at the
17 Southern Pines Police Department related to probable
18 cause or making an arrest when drugs are found on
19 someone's property or in someone's constructive
20 possession?

21 A. That specifically, I don't recall. We do have
22 policies that pertain to arrest procedures, evidence
23 collections. The -- the 500 series of the general
24 orders are more often than not applicable to or
25 directly applied to the Investigations Division, but

1 I don't -- you know, to -- to be specific to your
2 question, I'm -- I -- I don't have a good answer for
3 that.

4 Q. What about in practice? Is it your practice to make
5 an arrest of someone if drugs are found on their
6 property.

7 A. Can you be more specific?

8 Q. So you go to a scene of a crime. You could say we'll
9 start with a car stop. There's four people in a car.
10 Drugs are found in the center console. Would it be
11 your practice in that situation to arrest everyone in
12 the car?

13 A. It would depend on the exact circumstances of that
14 particular incident. I don't think you can broadly
15 say that every time this happens, you know, then this
16 is the outcome without knowing all of the details
17 that surround that.

18 You know, to be considered, you know, what is
19 the likelihood of -- of that person being able to --
20 to access it? You know, what -- what factors come
21 into play? There's -- every situation is different.

22 Q. So it's -- so probable cause, you're saying, is a
23 fact-specific inquiry.

24 A. Well, to -- probable cause, many definitions of it,
25 but probable cause for -- to me, my -- my knowledge

1 of probable cause is, you know, a set of
2 circumstances that are supported by facts and
3 evidence that would lead, you know, a reasonable
4 person -- myself, someone else -- to look at those
5 facts and come to a similar conclusion. It's not a
6 guaranteed, you know, crystal clear, this is exactly
7 what it is, but a reasonable person looking at a
8 situation, you know, what conclusion would they come
9 to.

10 Q. So there's no bright-line rule.

11 A. Say again?

12 Q. There's no bright-line rule that you --

13 A. I don't understand.

14 Q. There's no set rule for probable cause in every
15 single case.

16 A. I -- I don't think I understand your --

17 Q. Well, so I gave you a hypothetical, right, of four
18 people in a car, and you're telling me that you can't
19 say for certain in that instance because every case
20 is different.

21 A. Uh-huh.

22 Q. Yes?

23 MR. JONES: Is that a yes?

24 THE WITNESS: I'm sorry.

25 A. Sorry. Yes. Every case is different.

1 BY MR. RUBERT-SCHEWEL:

2 Q. Okay. And I'm just saying that -- and -- and the
3 reason why you can't say that is because there is no
4 bright-line rule of determining when there is
5 probable cause or when there is not probable cause.

6 A. I believe that to be true.

7 Q. Okay.

8 A. I'm not completely sure I understand, you know, if --

9 Q. It's not a trick --

10 A. -- if I'm answering that --

11 Q. You are, you are.

12 A. -- correctly, but, you know, what -- what I am saying
13 is probable cause, thing -- things can change. It's
14 evolving. You know, every investigation evolves.
15 Circumstances evolve.

16 Q. Uh-huh.

17 A. And there are things that can tip a scale more one
18 way than the other. So, you know, probable cause is
19 not written, you know, in -- in a manual as in if
20 this happens, then -- then you're at that level.
21 It's -- you know, it's a totality of -- of
22 everything. Totality of all the circumstances in a
23 given situation.

24 Q. And it can evolve throughout an investigation.

25 A. Sure.

1 Q. So your -- your perception of probable cause or your
2 determination of probable cause can change from the
3 time of arrest and if you learn new information to
4 the time of arraignment.

5 A. Sure.

6 Q. So just back to the car hypothetical. Factors that
7 you could -- that you stated, I think, you could
8 consider. I think you stated you could consider a
9 number of different factors. Would that include also
10 possession of a large amount of money?

11 So I'll -- I'll back up and strike that
12 question. I'm talking about you pulled over a car.

13 A. Uh-huh.

14 Q. There's four people inside of the car. Okay? You
15 find drugs in the center console. You're determining
16 now whether to charge anyone for those drugs. If one
17 of the passengers had a large amount of cash on them,
18 would that be part of your consideration for probable
19 cause to charge that person?

20 A. Again, every circumstance is different, but would
21 that have a bearing on -- on the decision? It could.
22 It very well could. But, again, it just -- it
23 depends on more than -- than just what you're giving
24 me.

25 Q. Well, and I'm not -- I'm not asking you to tell me if

1 there is probable cause or if there isn't probable
2 cause. I'm just asking if that's a factor --

3 A. Could it be a --

4 Q. -- you would consider.

5 A. It could be a factor to be considered, yes.

6 Q. Okay. What about if you saw someone place a package
7 into the center -- center console at the time you
8 pulled the car over?

9 A. Yes. At the -- at that time, yes. But could it have
10 been that -- again, it's -- you know, it's a totality
11 of -- of everything, but would I consider that as a
12 factor? Yes. Yes, I would.

13 Q. Okay. So prior to your new role, you were lieutenant
14 in charge of the Investigations Division.

15 A. Yes.

16 Q. What were your responsibilities in the Investigations
17 Division?

18 A. To oversee the personnel that were assigned to the
19 Investigations Division. I believe during that time
20 we had eight, between investigative staff and a part-
21 time crime scene technician. Evaluate employees,
22 scheduling. Case management was -- ate up most of my
23 time. That would be every report that came through,
24 to review that report for errors, assign it back for
25 corrections, and then make case assignments to the

1 investigators or assign the case back to the
2 reporting officer for follow-up.

3 Q. Okay. So we'll just go through these, I guess.

4 A. Sure.

5 Q. Evaluate -- I'm sorry. You said you had eight
6 employees?

7 A. I believe that's -- I believe that's right.

8 Q. Approximately.

9 A. Yeah. It's -- it has -- you know, the O chart did
10 change.

11 Q. And were -- were -- and one of those, you said, was a
12 part-time officer who was a evidence technician?

13 A. No. Not a part-time officer. It was a part-time
14 civilian employee who was --

15 Q. Was that Victoria Price?

16 A. Victoria Price during that time. And she was, like,
17 a crime scene technician.

18 Q. And the other seven, were those all Southern Pines
19 Police Department officers?

20 A. Yes.

21 Q. And were they all detectives?

22 A. It was Detective Sergeant Brian Edwards who's still
23 the sergeant of the Investigations Division. He
24 oversees the division now. And then the -- the rest
25 were made up of detectives.

1 Q. Okay. And at the time, did that include Officer
2 Heaton?

3 A. No. At that time Heaton was a lieutenant as well.
4 He was lieutenant, I believe, on a directed patrol
5 unit. I think -- yes. It was called Echo Team at
6 that time. He was the lieutenant that oversaw that
7 team.

8 Q. Okay. And you said that one of your responsibilities
9 was also case management.

10 A. Yes.

11 Q. And case management, you said, was largely reviewing
12 paperwork or reports.

13 A. Reports through our records management system,
14 signing those -- assigning those reports to
15 detectives for follow-up. There --

16 So anytime an officer -- you -- you know, even
17 today when an officer completes an incident report
18 for a call for service they -- they go on, that
19 report gets submitted to their supervisor for
20 approval and then it would be routed to whoever
21 oversees the Investigations Division. The
22 Investigations Division commander then secondary
23 reviews reports, you know, can assign them for
24 correction, assign them out for further
25 investigation, things of that nature.

1 Q. So just because you're in charge of the
2 Investigations Division does not necessarily mean
3 that you're the supervisor of everyone in that
4 division.

5 A. During that time I -- I was also the -- yes --

6 Q. Okay.

7 A. -- I was the supervisor also.

8 Q. Okay. But it's not necessarily always that way.

9 A. I don't understand.

10 Q. Well, I -- I thought what you were saying is that
11 there could be a situation where a report is sent to
12 a supervisor who is not the person in charge of the
13 Investigations Division to review.

14 A. Yeah. So it -- it's -- it's a layered system, if you
15 will.

16 Q. Yeah.

17 A. So when an officer -- a patrol officer, when they
18 complete a incident report, accident report, it goes
19 to their immediate supervisor.

20 Q. Okay.

21 A. And it's all done electronically. It's not paper or
22 anything like that. It's -- it's electronically. So
23 through the system it would go to that supervisor for
24 their initial approval. Once that report would be
25 approved, it would then be forwarded to the

1 Investigations Division. Not accident reports, but
2 all incident reports --

3 Q. Okay.

4 A. -- would be forwarded to that division --

5 Q. But --

6 A. -- for a secondary review.

7 Q. But in 2017 and 2018, you were the lieutenant in
8 charge of the Investigations Division as well as the
9 supervisor over each of these eight employees.

10 A. Not the entire time, no. I didn't become lieutenant
11 of Investigations until the late fall of 2017.

12 Q. So at the -- let's -- then let's say February of --
13 of 2018 --

14 A. Yes.

15 Q. -- so the time of the arrest is the --

16 A. I was the Investigations Division commander.

17 Q. And you were also the supervisor who would review the
18 reports of each of these employees.

19 A. Yes.

20 Q. Okay. And so --

21 A. Well, I guess to clarify on that as well, if -- if I
22 may. In my absence, Sergeant Edwards would do the --
23 do my job --

24 Q. Sure.

25 A. -- in -- in that instance to review reports, you

1 know, assign cases. So if I wasn't there or if I was
2 tied up, and there may be times that I would -- I'd
3 just tell him, "Hey, review -- these reports are in.
4 Can you review them?"

5 Q. How many investigations were occurring at a single
6 time in -- in 2018?

7 A. I have no idea.

8 Q. Approximately?

9 A. I would be afraid to guess.

10 Q. More than ten?

11 A. Absolutely.

12 Q. More than 50?

13 A. So every agency does case management a little
14 different. At the sheriff's department, for example,
15 we never inactivated cases. You -- you know, that --
16 so --

17 Q. I see.

18 A. -- you have case status. Case status is open
19 ongoing; closed, cleared by arrest; closed, cleared
20 by exceptional means; unfounded. And if I hadn't
21 said inactive, inactive.

22 The sheriff's office, during my time there,
23 they never inactivated a case. They'd file it away.
24 It may not be actively being worked, but they never
25 changed the status to a case as inactive. You know,

1 by our -- you know, I don't recall exactly what the
2 policy is today because I don't deal with it on a
3 daily basis, but during that time investigators,
4 officers who were assigned to follow up on cases, so
5 they were required to complete a supplementary report
6 -- I think it was every ten working days or ten days
7 that they worked.

8 So in an instance like that, that's, you know,
9 why you would inactivate a case. You don't have
10 enough to close it out. You -- maybe you didn't have
11 cause to make an arrest. So you would in essence
12 inactivate the case or request that the case be
13 inactivated. So you have those different case
14 statuses.

15 I -- I -- I'm not comfortable guessing at how
16 many ongoing investigations would be -- 'cause it --
17 it varies, but each detective would have multiple
18 open cases at any given time.

19 Q. Okay. Do you --

20 A. And when I say "open," active investigations that are
21 not placed in a inactive status.

22 Q. And -- and as a supervisor or now as a captain, is
23 there any effort to limit those investigations or put
24 a cap on the number of investigations that each
25 individual officer is working on?

1 A. When I was lieutenant of Investigations, my goal
2 initially was to -- because I was a detective from
3 2014 until I got promoted to lieutenant and went back
4 on patrol. One of the things I wanted to do during
5 that time was to have case management more
6 streamlined to make it make more sense. So what I
7 changed was I started assigning cases geographically.
8 So the town is broken into three districts: Zone 1,
9 Zone 2, Zone 3.

10 Technically, there's a downtown district, but
11 in our records management system it's really not
12 recognized, if you will.

13 So Zones 2 and 3, by far, are the more busier
14 districts, Zone 1 being the largest, but 2 and 3 by
15 far are more populated, more commercial, and a lot
16 busier. So I would have a detective assigned to each
17 zone and then would, in turn, assign someone to float
18 between 2 and 3. And that's how I started assigning
19 cases. I can't answer if that's the way it still is
20 or not, but when a case came in in a zone, you knew
21 you were getting it.

22 Q. Uh-huh.

23 A. It also streamlined it with the division commanders.
24 Each patrol lieutenant is responsible for a district,
25 so it allowed -- anytime something happened in the

1 downtown district, whether it be the Zone 1 or Zone 2
2 side, it allowed that district commander to know
3 exactly who was going to get assigned their case to
4 make things flow more efficiently.

5 Q. Okay. So I guess, then, the -- the answer to my
6 question of any sort of cap on a number of
7 investigations is really no.

8 A. I don't recall ever not assigning a case because of a
9 cap.

10 Q. Or because an officer --

11 A. There was no magic number written down somewhere --

12 Q. Yeah.

13 A. -- that they can't have more than this.

14 Q. Okay. And -- but you don't -- do you recall how many
15 investigations that -- you know, the -- the most
16 investigations any officer in your unit was working
17 on at that time?

18 A. I have no clue.

19 Q. Okay. So what was your role in overseeing the
20 investigations?

21 A. Case management was the biggest part of it. If
22 someone hadn't followed up on a case or had made
23 contact with the victim, I would be the one to answer
24 those calls and get answers as to why haven't you
25 spoke with this victim.

1 During -- during my -- my tenure as lieutenant
2 of Investigations, to be quite honest with you, we
3 had a great division. Very seasoned officers. They
4 worked very well together during major cases, very
5 difficult cases. I had no complaints of -- of any of
6 those guys. They did a great job, and they really
7 made my job a little easier.

8 Q. So how would an investigation typically begin?

9 A. Any specific investigation or in general?

10 Q. In general.

11 A. We get a call for service that patrol responds to.

12 They take an incident report that they list the
13 facts, you know, in the -- or the information they're
14 provided by the caller or the reporting party in the
15 investigative report. They try to work it until it
16 can't be worked. If it's something of a more serious
17 nature that needs to be forwarded up to an
18 investigator, then, you know, once I got that report,
19 I would assign it out. But some -- some cases are --
20 are -- are left on the patrol level.

21 Q. And how many of these investigations or the
22 investigations that you were overseeing at that time
23 involved outside law enforcement agencies?

24 A. I -- I don't know the number. We work across, you
25 know, jurisdictional lines on a regular basis. One

1 of -- you know, during part of my tenure as
2 lieutenant in Investigations, I had nearly the entire
3 division dual sworn as deputies with the Moore County
4 Sheriff's Office. Also, two detectives were sworn
5 with the FBI as well, but we -- we have a good
6 working relationship with our surrounding agencies
7 and -- and connections, you know, through --
8 throughout the state that, you know, we work with on
9 a -- on a regular basis. But I can't tell you a
10 number of this many cases outside agencies were
11 assisting on.

12 Q. Did every case involve outside agencies?

13 A. Every case? No.

14 Q. So there's some cases that were handled just
15 internally with the Southern Pines Police Department.

16 A. Sure.

17 Q. Okay. How many cases would you say involved the FBI?

18 A. Couldn't give you a number.

19 Q. Okay. And -- and I guess just to back up a little
20 bit, investigations are not always long-term
21 investigations before an arrest is made, are they?

22 A. Not always, no.

23 Q. So sometimes it's someone calls 911. They say, you
24 know, "A burglary has happened here." You send an
25 officer, they show up, and -- and they make an arrest

1 right away.

2 A. Sure.

3 Q. That could happen.

4 A. Correct.

5 Q. Okay. But in some cases, you also do have longer-
6 term investigations prior to an arrest.

7 A. Yes.

8 Q. How many investigations would you say when you were
9 in charge of the division were actually these longer-
10 term investigations that -- that, you know, were
11 months or a year prior to an arrest being made?

12 A. It -- again, it varies. So, you know, part -- and in
13 -- in the 500 general orders, I don't recall if it's
14 in case management or which one it is, which one of
15 the GOs it is, but it's in the 500s. The
16 Investigations Division commander is -- you know,
17 conducts a cold case review. And so you find cases
18 that are, you know, either in an inactive status that
19 have not been closed out. A lot of times those -- or
20 the ones that you focus on aren't the found property.
21 It's the homicide -- a open suicide or something like
22 that. And, you know, it can be years later that --
23 that those cases -- you know, they -- they've spanned
24 over several years.

25 An example: when I got assigned the

1 Investigations Division as a detective in 2014, I
2 came -- I came back to work in Southern Pines,
3 Veterans Day of '13 in November. I was assigned to
4 the Investigations Division as a detective at the
5 completion of my field training period.

6 During that time it was a rough time for this
7 area. The south end of the county had several
8 unsolved murders. So 2012, 2013, cases I ended up
9 getting assigned when I worked in the Investigations
10 Division. So those cases were -- you know, the --
11 the youngest one, 12 months old at least whenever I
12 was assigned it.

13 So, you know, any type of investigation could,
14 you know, span over a long period of time, but I -- I
15 can't give you a number of, you know, this is how
16 many do span over --

17 Q. Sure.

18 A. -- over a long period of time.

19 Q. What type of investigations are the -- is the FBI
20 typically involved in?

21 A. Drug cases, robberies. When I say robberies, not --
22 you know, not your gas station, but of financial
23 institutions. Gun cases, weapon seizures, other --
24 you know, other types of robberies. So things in
25 commerce.

1 So I say not gas stations, but in theory, the
2 -- the FBI, if you did have a gas station that was
3 robbed and an item was -- was stolen that crossed
4 state lines in its delivery to the -- the merchant,
5 they could get involved. But, you know, worked with
6 the FBI, you know, numerous times on -- on drug cases
7 and -- and robbery cases.

8 Q. Okay. And how is the FBI brought into an
9 investigation that originated with Southern Pines?

10 A. Going back to my time in Moore County -- well, even
11 when I started my career here in Southern Pines as a
12 patrol officer, I had several cases that went
13 federal. Usually, in -- you know, in the beginning
14 of my career, if it was a gun or drug case, ATF. It
15 was always ATF that would adopt the case.

16 And in recent years, in the past, you know,
17 five, ten years, if you will -- not exactly sure
18 when, but we were assigned Special Agent in Charge
19 Andy de la Rocha. And Andy was really one of the
20 first people that we started having, you know, a -- a
21 frequent relationship with the FBI. And, you know,
22 missions change and, you know, he relayed that the
23 FBI's mission was to do more work with local law
24 enforcement to assist in federal prosecutions or
25 resources.

1 Andy would attend our comp stat meetings that
2 are held biweekly, and he was -- was an incredible
3 asset for us. So whereas most people think the FBI
4 are only going to come out for a bank robbery, they
5 actually have their own narcotics section and -- and
6 -- and other things, too, to the point that we ended
7 up having, you know, two detectives dual -- you know,
8 sworn in as task force officers with the FBI,
9 basically giving them global jurisdiction.

10 Q. Which officers were those?

11 A. Sergeant Perry and Sergeant Lowery.

12 Q. Was Andy -- was Officer de la Rocha or FBI Agent de
13 la Rocha, was he involved in Operation Leader?

14 A. I don't recall. His -- I know he -- one of his
15 agents were, had some component to it. Specifically,
16 I believe the camera on New York Avenue belonged to
17 the FBI, and Mike Martin was the agent that I believe
18 our officers worked with. Again, I'm not 100 percent
19 certain on -- on that because all of that happened
20 prior to me becoming lieutenant in Investigations.

21 So Rodney Hardy was the lieutenant in
22 Investigations when this case began. I was
23 lieutenant -- became lieutenant in Investigations in
24 October of 2017 when Rodney Hardy retired.

25 Q. What were you doing prior -- directly prior to the

1 time you were the lieutenant in Investigations?

2 A. I was lieutenant on patrol for David Team.

3 Q. Now, to get Andy de la Rocha or to get the FBI
4 involved in the case, I understand that he would be
5 at your comp stat meetings, but how would that occur?
6 Would he approach you about a case or would you
7 typically approach him about a case to get them
8 involved?

9 A. Me personally, I would have very little with any
10 doing that, like communication with him about that.
11 So that would be the -- you know, the officer who's
12 working a case. And more often than not, it's going
13 to be us as an agency reaching out to them for either
14 resources, manpower, whatever the case may be. But
15 it would typically be us reaching out to them.

16 Q. And just so I'm clear, typically the person who would
17 do that at Southern Pines would be the detective in
18 charge of that investigation.

19 A. Yes. Now, with an investigation such as this, you
20 know, it would likely be in consultation with the
21 division commander, possibly even the chief, but --
22 but, yes, it would be us reaching out to them.

23 Q. Why would it be different in -- in this type
24 investigation, in Operation Leader?

25 A. What -- what do you mean why would -- why would it be

1 different?

2 Q. Well, so you just stated in investigations such as
3 this they may reach out to the commander or the
4 chief. Why would that be so in this instance?

5 A. Just to keep them up to speed. Not necessarily
6 asking for permission, but just to -- to, you know,
7 keep the command staff, you know, up to speed, to
8 bounce ideas off of a direction, a reason -- you
9 know, what's -- what's the reason. You know, things
10 of that nature.

11 Q. And my -- I guess my question is, is that just
12 because Operation Leader was a more large-scale
13 investigation?

14 A. It -- it was a large -- a larger-scale investigation,
15 you know, especially for a small agency to -- to
16 spearhead. But -- but, yeah, I mean, you would --
17 you would want to keep command staff, you know, in
18 the loop. We wouldn't want necessarily, you know, a
19 detective to -- to reach out to -- to multiple
20 agencies to --

21 Q. Sure.

22 A. -- for assistance and then you get a call from the
23 town manager, "Well, why are all these other cars
24 bouncing around in our neighborhood?"

25 Q. Uh-huh.

1 A. So -- but, yeah, I mean, something like that, you
2 would typically consult; not necessarily asking for
3 permission or anything like that, but to bounce ideas
4 off of.

5 Q. Okay. So how about the District Attorney's Office?
6 In a large -- or a long-term investigation such as
7 Operation Leader, what is the District Attorney's
8 Office role -- role in an investigation like that?

9 A. To review search warrants; applications for, you
10 know, trackers or pen orders, things of that nature;
11 to -- to review affidavits; to make sure they're okay
12 with the direction it's going. It could vary.

13 Q. What do you mean to make sure they're okay with the
14 direction it's going?

15 A. That -- like in the -- in an affidavit to -- to put a
16 tracker on, well, you know, this is -- this is why,
17 you know, the -- we feel, you know, information would
18 be gathered from that tracker. You know, things like
19 that. You know, who would be a better federal
20 candidate versus state candidate. You know,
21 conversations like that could take place.

22 Q. In your experience, why would someone be a better
23 federal candidate versus a state candidate?

24 A. I've had a lot of experience prosecuting -- I say
25 prosecuting -- sending cases to -- to federal court.

1 From, again, early in my career as a patrol officer
2 with traffic stops, with narcotics and weapon
3 seizures to my time as a narcotics detective with the
4 sheriff's office would present our own cases without
5 having to go through a federal agency. There's
6 typically qualifiers. Criminal record, the quantity
7 of -- of narcotics.

8 At one point in time -- and I do not know what
9 the boundaries are now, but a -- you know, a
10 qualifying felony conviction and five grams of crack
11 cocaine was a minimum mandatory sentence in the
12 federal system.

13 Q. Uh-huh.

14 A. There were different thresholds that -- you know,
15 that -- that the federal system had, but those
16 guidelines are constantly evolving. I can't tell you
17 what they are today. I can tell you what they were
18 in 2018.

19 Q. Uh-huh.

20 A. But I had a lot of experience, you know, with sending
21 cases to -- to the federal level. More often than
22 not, the criminal record would come into play.

23 Q. And -- and how would that work? Would it be that you
24 would typically contact an FBI agent, or would you
25 contact the US Attorney's Office?

1 A. It could be both. Some Assistant US Attorneys will
2 not take a case unless it comes from a federal
3 agency. My time at the Moore County Sheriff's
4 Office, we could call an Assistant US Attorney and
5 meet with them on a case and they would adopt it
6 straight from us. I don't know what the rules are
7 now as far as, you know, can local agencies still do
8 that? I don't know.

9 But it -- it -- it could be both ways. It
10 could be through a federal agency or straight through
11 an AUSA. I believe during those years we -- we did
12 it both ways. But, again, once our detectives became
13 sworn federally, it really didn't matter at that
14 point.

15 Q. Why not?

16 A. Because they were federal agents.

17 Q. And so you could just refer cases directly through
18 them?

19 A. Doesn't mean they would take them, but -- but, yes.

20 Q. So essentially, if you had a case when you were
21 supervisor of the Investigations Division or in
22 charge of the Investigations Division that you
23 thought or you wanted to go federally, you would get
24 in touch with Detectives Perry or Lowery and you
25 would ask them to communicate that to --

1 A. With an Assistant USA.

2 Q. -- with an Assistant USA.

3 A. But, again, that conversation could also go, you
4 know, "Communicate with the DEA or a full time FBI
5 agent or ATF." The Moore County Sheriff's Office has
6 at least one TFO with the ATF and -- and has for a
7 majority of my career. Sometimes we would take --
8 take things through that person as well.

9 Q. And when you were supervisor in Southern Pines and
10 y'all would do this, you would take a case federally,
11 would it typically be -- would you -- would you
12 provide the federal agents with a packet of
13 information, would you provide them with incident
14 reports, or would it generally just be a conversation
15 to describe the case?

16 A. They almost would always want something and a
17 prosecution summary is typically what they were
18 given. So the prosecution summary being what is
19 turned out to the state for state prosecutions, we
20 would put something like that together and submit it
21 to the AUSA. I can't think of a time where it would
22 have been just a conversation.

23 Q. And when you're providing that to the FBI or to the
24 US Attorney, is that provided in hard copy or is it
25 provided via e-mail?

1 A. In my experience as a case officer, it would be done
2 in person.

3 Q. In person.

4 A. It would -- it would be done in person. Now, I -- I
5 can't speak for, you know, how -- how these -- these
6 files would have been transmitted specifically like
7 for this case.

8 Q. Uh-huh.

9 A. I don't know how -- how they would have been
10 transmitted. To the state, you know, they're
11 uploaded to a portal, but with the federal system, I
12 -- I don't want to misspeak about how things, you
13 know, are accepted, you know, since -- since I've
14 done it. And it's been many years since I have
15 personally.

16 Q. And just so I'm clear, when you would have done it,
17 you would have actually met with the US Attorney.
18 You would have a meeting, you'd discuss the case,
19 you'd show them the evidence, you'd show them the
20 incident reports, and the prosecution summary?

21 A. Yes, sir.

22 Q. Okay. And in 2018, was the District Attorney's
23 Office here using the portal?

24 A. Yes. NCAWARE.

25 Q. As part of an investigation, would you also

1 communicate with the DA's office via e-mail?

2 A. Sure. It's possible.

3 Q. How about via text message?

4 A. Highly doubtful but yet possible. By phone, yes.
5 Again, e-mail, but especially today most definitely.
6 But I -- through text? I really can't answer.

7 Q. Did the DA's Office have their own investigators?

8 A. Over time, yes. All the time, no. I know of two
9 investigators that the Moore County District
10 Attorney's Office has had in the past. I can't tell
11 you when they worked there. One was Kip Dennis, and
12 I do not recall the gentleman's name from Ohio.

13 Q. But generally --

14 A. But I remember when they worked there.

15 Q. -- for -- when you're on an investigation and you're
16 communicating with the District Attorney, you're
17 communicating with the District Attorney who's
18 assigned to the case.

19 A. Yes. More often than not, yes.

20 Q. And the phones that you're using to communicate with
21 them -- well, let me strike that question.

22 You were assigned phones by the Southern Pines
23 Police Department.

24 A. Yes.

25 Q. And those phones had text message capabilities.

1 A. Yes.

2 Q. Okay. So let's -- let's talk about a typical
3 long-term investigation such as Operation Leader.
4 Who was typically in charge of running this sort of
5 investigation?

6 A. The case officer. And when I -- I didn't mean that
7 if it came off wrong, but the case officer being the
8 detective.

9 Q. Sure.

10 A. Yeah.

11 Q. And could there ever be two case officers?

12 A. Sure.

13 Q. Why would there be two cases officers?

14 A. In -- in this type of investigation, there were two
15 detectives that were assigned the narcotics/gang
16 function. That was their job. They didn't -- I'm
17 not going to say they never investigated general
18 crimes, but their job was to investigate, you know,
19 narcotics and gang activity, things of that nature.
20 So in a long-term investigation, they -- you know,
21 they would both be lead, if you will, on it.

22 Q. So there were investigations where Detective Lowery
23 and Detective Perry were independently in charge.

24 A. Could there have been investigations that -- where
25 they were independently in charge? Sure. It -- it's

1 possible. Like, you know, I'd said, that they could
2 also work general cases during their times as task
3 force officers with the FBI. Anytime we had a major
4 robbery, I've tasked them with working that robbery.

5 Q. Uh-huh.

6 A. You know, jewelry stores, financial institutions.
7 Those are things that are easily federally
8 prosecuted, so I would assign them to it to eliminate
9 any middle person. And in an instance like that,
10 they -- they would be individually responsible for
11 that investigation, if you will.

12 Q. And when you would assign them, you would almost
13 always assign them to work on it together.

14 A. On like a robbery incidence that I'm talking about,
15 or are we talking about like a drug case?

16 Q. Well, let's -- let's add both.

17 A. So a drug case, that's their job. They're narcotics
18 detectives. That their job. So, yes, they -- they
19 should be working together. If one's unavailable,
20 somebody else could fill in. But, you know, if a
21 specific task needed to be done, meeting with an
22 informant, conducting surveillance, that -- that
23 could be -- we can pull from anybody, you know, that
24 -- that you need. You know, things happen.
25 Vacations, sicknesses, things like that. You know,

1 you have to -- to be able to -- to improvise and to
2 keep things alive.

3 Q. Would you have considered -- would -- would either of
4 them ever have been assigned as a lead directive over
5 one or the other?

6 A. Over one or the other? No. If -- if I was going to
7 assign, you know, a -- a lead detective to this case
8 -- and when I say assign, if I was going to put
9 somebody's name as they were the lead on this case,
10 it would be Sergeant Perry.

11 Q. Why?

12 A. Well, I'll be honest with you. I've worked with a
13 lot of people in my career, and he gets the job done.
14 He spends more time with this job than he should.
15 He's dedicated to it, and I know he's going to do it
16 right. I mean, that's -- I know of two other people
17 that were assigned to work with him, and they had a
18 hard time keeping up. And it's because of his level
19 of -- of dedication to -- to, you know, staying on
20 top of things.

21 Q. Okay. But just from a structural or organizational
22 standpoint, if Lowery and Perry are both assigned to
23 a case, are they both equally responsible for that
24 case?

25 A. I don't want to make -- make an assumption, but --

1 but, yes. I mean, do -- they both share
2 responsibility in the case, but saying that they're
3 equally responsible, I mean, it's not a -- you know,
4 it's not a this person's name goes at -- you know,
5 they're the ones who wrote this book and they're the
6 ones who get credit for writing this book. That's --
7 that's now how any case works. You may not be the
8 person whose name goes on that arrest report. That
9 doesn't mean you didn't have a major component to
10 that case.

11 So I don't -- I've never really labeled "It's
12 your case." I mean, it's -- it's a team effort, and
13 I really don't know any better way to -- to answer
14 that -- that question as far as, you know, a 60/40, a
15 50/50. I mean, it's -- at the end of the day it's a
16 Southern Pines case and, you know, like in anything,
17 somebody does more work than the others.

18 Q. Let's say there was a disagreement and Officer Lowery
19 said, "I believe there is probable cause to arrest
20 this person" and Sergeant Perry said, "I don't think
21 there is." Who would win in that instance?

22 A. They would take it to a superior officer. More often
23 than not, that would end up being me during -- during
24 those times.

25 Q. So, essentially, the buck stops with you if there is

1 some sort of conflict.

2 A. Well, sure.

3 Q. How do you decide who is the arresting officer?

4 A. I don't necessarily make that decision.

5 Q. How is that decision made in the field?

6 A. Well, it's -- I mean, it's kind of a roll, I mean,
7 saying who's the arresting officer. You know, we can
8 have a case to where we obtain warrants on someone
9 and, you know, a -- another officer from another
10 jurisdiction finds the person and makes the arrest.
11 That's the arresting officer. You know, in
12 situations like this case here, it's what's best for
13 the team. You know, "Everybody find a job." You
14 know, "You type the warrants. You transport the
15 person. You serve the warrant." It's -- it's not a
16 -- you know, assigning an arresting officer, if you
17 will. I mean, it's --

18 Did I answer -- did I answer that question?

19 Q. Yeah. And so, you know, we can -- we'll take a --
20 we'll take a break soon. I'm -- I'm coming to --
21 well, I say that, but I think I'm coming to a good
22 stopping point. And let me know if you ever --

23 A. You're fine.

24 Q. -- want one.

25 But, you know, it sounds like you're out in

1 the field or let's say you -- you -- you execute a
2 warrant and there's multiple officers on the scene,
3 and officers can be doing different responsibilities.
4 One can be collecting evidence, one can be doing
5 something different, and some officer who's there at
6 part of the scene can just be assigned to take that
7 person down to the magistrate and be assigned as the
8 arresting officer.

9 A. Yes. That -- that happens, especially in a -- if
10 you're executing a search warrant, that's -- that's
11 going to happen. The person who physically is -- if,
12 you know, makes the physical arrest as far as
13 transporting the person before a judicial official
14 may not be the person who is the -- you know, one of
15 the originating case officers.

16 It could be anybody. We may have other places
17 we need to go, and those other places may not be --
18 we may not need to send someone who is not versed on
19 the case. You -- that's something you don't want to
20 just send anybody to. Everybody knows how to get to
21 the magistrate and how to serve a warrant. I mean,
22 so, you know, it's -- it's -- it's case-dependent on
23 what resources you have and -- and what needs to be
24 done.

25 Q. Okay. So -- but when -- when you go to the

1 magistrate, you do have to provide them, if there was
2 not a warrant already --

3 A. The facts of a case.

4 Q. -- provide them with probable cause, right?

5 A. Yes.

6 Q. And if someone goes who is not versed on the case,
7 how is that done?

8 A. It's relayed from one officer to another.

9 Q. Okay. So --

10 A. And one officer can testify to what they know from
11 another officer.

12 Q. Is -- is there ever a situation where a report will
13 also be brought or handed from one officer to an
14 arresting officer to then be put in front of the
15 magistrate?

16 A. What type of report? Like I -- I don't know.

17 Q. Just any -- any writing: an incident report,
18 anything at all. Is there -- a supplement. Is there
19 anything that could be --

20 A. Again, not a -- I mean, it's not a 100 percent every
21 time answer. But if you were taking someone before a
22 judicial official without a warrant in hand, then you
23 call that an on view arrest, arrest without a
24 warrant. A lot of times in those types of situation,
25 no report exists yet. So like if you're talk- --

1 referring to, like, an incident investigation report,
2 a lot of times that wouldn't exist.

3 Q. Uh-huh.

4 A. An example, you pull someone over and -- in a traffic
5 stop and they, you know, have a illegally possessed
6 firearm. There hasn't been an incident report yet.
7 There's no warrant. It's an on view arrest. So,
8 therefore, you would just be testifying to the facts
9 of it. You could have another officer transport.

10 So let's say that the person was combative and
11 the officer who pulled him over was a K9 officer who
12 doesn't have a prisoner transport. Then that arrest
13 could be turned over to someone that had a cage car
14 and, you know, the -- the arrest move forward that
15 way, and that officer, you know, testify to -- to
16 what the previous officer told him.

17 Other ways of -- of doing that are through
18 what used to be called the Jabber system and,
19 unfortunately, it's been a little while since I've
20 had to go before a magistrate. But the Jabber system
21 was the online system -- call it FaceTime, but it was
22 their -- their version of it through a -- a camera
23 that was in our patrol officers' room. And there was
24 a Bible and you could swear to the facts remotely
25 that way. Those were other ways that an arrest could

1 be made without the -- the initiating officer, if you
2 will, being present.

3 Q. Could an officer ever call the magistrate and say,
4 "This is what happened at the scene. This is what we
5 observed. These are the facts for probable cause"?

6 A. Just calling them?

7 Q. Well, I'm saying if there's someone else who brings
8 them physically in. In your experience, have you
9 ever had a situation where a different officer is
10 called in to explain the facts for probable cause?

11 A. Not that I'm aware of because they wouldn't be
12 swearing to anything. There was no way to -- without
13 some type of video or a notarized affidavit or
14 something like that, I don't see how you could -- you
15 could do that.

16 Q. And tell me again, the Jabber system. Where was
17 that?

18 A. The patrol officers' room at the police department.
19 Aberdeen had one; the sheriff's office. I don't know
20 what all agencies had them.

21 Q. Does Southern Pines?

22 A. I don't know if we have that anymore or not. I don't
23 know.

24 Q. Did you have it in 2018?

25 A. I'm pretty sure we did. We had it for many years.

1 Q. Okay. And so essentially what it was was a FaceTime
2 or, you know, a Zoom type thing where you can see a
3 video of the magistrate, they can see you, and you
4 explain to them the facts of probable cause.

5 A. Yes. They would swear you in. And there was -- a
6 Bible was in the room. They -- you know, the camera
7 would have to be on. They would have to know that
8 your hand -- you know, that you were swearing or
9 affirming to the facts of the case. And that was a
10 common practice. The site was through AOC, but
11 that's really all I can tell you about it.

12 Q. Okay. So who on an investigation would make the
13 decision to take out a warrant for a search or an
14 arrest?

15 A. It could be the -- the officer, you know, who's --
16 who's investigating the case, that's assigned the
17 case. You're -- and you're -- you're talking about
18 like if they're assigned a case, who makes that
19 decision?

20 Q. Yes.

21 A. Okay. Then, yeah, it would -- it would be the
22 investigating officer.

23 Q. Would you ever -- as their supervisor, would you have
24 the ability to review that decision and say, "No,
25 we're not going to do that in this instance"?

1 A. Could I? Yes.

2 Q. In your experience, did you ever do that?

3 A. I don't recall.

4 Q. Would you be -- were you required to review arrest
5 warrants?

6 A. Arrest warrants, no.

7 Q. What were you required to review?

8 A. My title specifically at that time -- the only reason
9 I hesitate is there -- in the 500s when it comes to
10 search warrants, there is a requirement that the
11 search warrant be reviewed. I don't want to
12 misspeak.

13 Q. Uh-huh.

14 A. To paraphrase, it's the on-call investigator, the
15 watch commander, I think, are listed as people to
16 review a search warrant. More often than not, if a
17 search warrant was typed, I would review it.

18 Q. Okay.

19 A. But it has to be reviewed prior to being executed --
20 or, actually, before being presented to a judicial
21 official.

22 Q. By someone, and you're just not sure exactly what it
23 says in the --

24 A. I can't remember what the policy says, but more often
25 than not, Sergeant Edwards or myself would be the one

1 to review a search warrant.

2 Q. What about an arrest warrant?

3 A. No.

4 Q. So if you assigned a case to Officer Perry or Officer
5 Lowery, they can go and make an application for an
6 arrest warrant on their own and then go --

7 A. Yes.

8 Q. -- make an arrest without any sort of --

9 A. Yes.

10 Q. Would you typically review those arrest warrants?

11 A. I don't recall very many times of reviewing an arrest
12 warrant prior to it being issued. I'm sure it's
13 happened. I've helped officers type warrants.

14 The typical practice is for -- especially for
15 investigators is when they're obtaining a warrant on
16 someone -- it could be a magistrate's order, it could
17 be an arrest warrant -- they would actually type the
18 warrant themselves in NCAWARE and then go before the
19 magistrate with a temp number and the magistrate
20 would either find probable cause, not find probable
21 cause, and then issue the actual process.

22 I've -- I've helped type those and I've typed
23 very many of them, but actually reviewing them before
24 they go and -- and swear to them -- and, again,
25 speaking to arrest warrants, very far and few

1 between.

2 Q. Okay. So there's a policy in the Southern Pines
3 manual or -- or policy book that search warrants have
4 to be reviewed by a supervisor but arrest warrants do
5 not. There's no policy in the system.

6 A. I don't recall a policy dealing with arrest warrants.
7 Now, would I be made aware that they were going to
8 make an arrest in a case or -- yes. I wouldn't just
9 find out about it doing secondary review of reports.
10 I -- you know, I would be aware of it. But actually
11 physically reviewing an arrest warrant? Few and far
12 between.

13 Q. Okay. And by being made aware of it, would that mean
14 they would actually tell you about the case?

15 A. They could actually tell me about it or reviewing it
16 in a supplemental report that, you know, "These are
17 the facts and I plan to seek" or "I have an
18 appointment to seek" or something to that effect.

19 It's -- again, it's very rare that I ever
20 physically reviewed an arrest warrant, but it would
21 be just as rare for an arrest warrant to appear or to
22 have been obtained and I not know about it.

23 Q. Okay.

24 A. If that makes sense.

25 Q. It does. And just so I'm clear, and I think we

- 1 covered this already. If Officer Lowery or Officer
2 Perry or any of your other officers came to you and
3 they said, "We want to -- we're about to make this
4 arrest. These are the facts of the arrest. Here's
5 the supplemental reports or whatever we've been --
6 here's the evidence," and you said, "Whoa, I don't
7 think there's probable cause here," you would be able
8 to stop that.
- 9 A. I would -- I would have that ability, yes.
- 10 Q. But as far as your recollection, you don't ever
11 recall doing that.
- 12 A. In this case or in general?
- 13 Q. In general.
- 14 A. I don't recall.
- 15 Q. After an arrest occurs, what are the next steps in
16 the process? And I'll say after an arrest occurs
17 without an arrest warrant. What happens next?
- 18 A. Facts are provided to a judicial official, conditions
19 of release are set by that judicial official. Any
20 evidence that needs to be entered gets entered.
21 Reports are completed.
- 22 Q. And -- and just to back up, the judicial official
23 will write what's called a magistrate's order?
- 24 A. If it's an on view arrest, more often than not, that
25 is what they choose to do. You can't get a

1 magistrate's order for someone who's not in custody.

2 Otherwise, it would be a warrant for arrest.

3 Q. So if they're not in custody, what -- what happens?

4 A. A warrant for arrest or indictment. But, of course,
5 that would be going before a grand jury.

6 Q. So I think we -- you mentioned this already, but
7 could you tell me again what the prosecution summary
8 is?

9 A. Prosecution summary is all the investigative incident
10 reports, notes. For lack of a better word,
11 everything that's in the case file goes as part of
12 the prosecution summary. You know, papers are
13 scanned and uploaded. Other types of media are also
14 uploaded if there's room. You do have size/space
15 limits. Anything that can't be uploaded gets hand-
16 delivered.

17 Q. So physical evidence, is that part of a prosecution
18 summary?

19 A. The actual evidence itself -- and when we say, you
20 know, in a robbery case, the gun that they use?

21 Q. Yeah.

22 A. No. But photographs, property receipts, evidence
23 records, they could all be part of it that pertain to
24 that item. But the physical evidence stays with the
25 evidence room.

1 Q. Okay. And this is all uploaded through the NCAWARE
2 system?

3 A. Yeah. It's called the eWarrants now, and I'm not as
4 versed on it as I was NCAWARE.

5 COURT REPORTER: I'm sorry, repeat that?

6 THE WITNESS: eWarrants is what it's called
7 now.

8 BY MR. RUBERT-SCHEWEL:

9 Q. But in 2018 it was --

10 A. In 2018 it was NCAWARE.

11 Q. So what you're saying is that in some instances
12 media, videos, surveillance may be uploaded, but in
13 some instances it may not be.

14 A. It may have to be hand-delivered.

15 Q. Okay. So that -- that's more of a discretionary
16 decision.

17 A. Not so much discretionary as it is the system you're
18 dealing with itself. You have file size limits.

19 Q. Okay.

20 A. So with -- today, with HD cameras, you know, it can
21 -- a 27-minute video could be eight gigabytes.

22 Q. Yeah.

23 A. That would be too large, you know, for that.

24 Q. Okay.

25 A. So you would have to throw those on a USB and then

1 hand-deliver those, a copy of that to the prosecutor.

2 Q. So in -- in your opinion, the prosecution summary
3 would include all physical evidence as well.

4 A. All phys- -- include all physical evidence, no. But
5 the way I interpret your question is all physical
6 evidence being items that are physically in our
7 evidence room.

8 Q. Well -- well --

9 A. Am I wrong?

10 Q. Yes.

11 A. Okay.

12 Q. Pictures of those items.

13 A. Pictures of those items, yes, would be turned over.

14 Q. And this would all happen at the same time.

15 A. Not always.

16 Q. Okay. Tell me why, why it would not always happen at
17 the same time.

18 A. There could be multiple delays. The items may not
19 exist yet; things can get overlooked, especially when
20 you start talking about, you know, a thousand pages.
21 Some things could be copied front to back and not
22 realized whenever they're scanned in that you didn't
23 get the back page. You know, mistakes can happen
24 like that, but, you know, oftentimes it's -- they may
25 not exist yet.

1 Q. Is there a checklist of what to provide the
2 prosecution anywhere?

3 A. The prosecution summaries during that time actually
4 had a checklist built into it with a table of
5 contents and everything else.

6 MR. RUBERT-SCHEWEL: We'll do a follow-up
7 request for that as well.

8 MR. DAVIS: Yeah. I got it.

9 MR. RUBERT-SCHEWEL: If you'll make a note for
10 that. I'm not sure if we have that or not.

11 MR. JONES: You do.

12 MR. RUBERT-SCHEWEL: We do? Okay. Nachid,
13 will you try and pull that up?

14 MR. DAVIS: Yeah.

15 A. It usually is on page 2 or 3 of the prosecution
16 summary.

17 BY MR. RUBERT-SCHEWEL:

18 Q. Okay.

19 A. And if you have multiple prosecution summaries for
20 the same case, like you have to upload a summary for
21 every defendant.

22 Q. Okay.

23 A. In a larger case, the summary may be the exact same.
24 The only difference is the face page is changed where
25 it's got defendant/co-defendant, and you just -- you

1 switch those and you may just send multiple face
2 pages because everything else is the same in certain
3 cases, so.

4 Q. Okay. And is it typically the lead detective on the
5 case or the case officer who is in charge of
6 providing the prosecution summary?

7 A. The charging officer is -- is responsible for
8 producing them.

9 Q. And how about the incident or investigation report?
10 Who is in charge of completing that?

11 A. Normally, the -- well, on cases assigned for
12 follow-up, it'd be the initial responding officer.
13 You know, self-initiated cases by a detective, then
14 they would be responsible for that investigative
15 report. Execution of a search warrant, you know, the
16 -- the person who has applied for that search warrant
17 or is executing that search warrant, they're the ones
18 who would -- would handle that -- that incident
19 report.

20 Q. Okay. And in a case that's a long-term investigation
21 where you've already assigned officers to that, are
22 those officers you've assigned to the case in charge
23 of the incident or investigation report?

24 A. It could vary. There could be multiple reports that
25 come out of a single incident or -- not single

1 incident -- single investigation. So you have -- it
2 used to be the UCR reporting requirements by the FBI.
3 Now they've converted to NIBRS. There are -- with
4 that conversion, there were changes to date, time,
5 location, victims that can dictate when multiple
6 reports have to be done out of the same event.

7 Q. What about officers who provide supplements or
8 narratives to an incident report? How are those
9 gathered?

10 A. Through the same records management system. Instead
11 of doing an incident -- are you -- are you asking
12 like how are they collected?

13 Q. Well, I guess I'm asking really, let's say one of
14 your officers is in charge. Let's say Officer
15 Lowery's in charge of an incident report and he wants
16 to get a supplement from you. Does he go and ask you
17 for that supplement? Do you put that in on your own?
18 He knows you were at the scene? How is that done?

19 A. In a perfect world, he shouldn't have to ask for
20 anything.

21 Q. Yeah.

22 A. But let -- let's face it. People get busy and
23 sometimes you have to come around and ask, "Hey,
24 where's your supplement? I need your supplement."
25 You know, those -- those things happen.

1 Q. In your computer system, will that person -- does
2 that person get an automatic notification that a
3 supplement is due? Can -- can Officer Lowery go in
4 and add everyone to that case who was on the scene?

5 A. Not that I'm aware of.

6 Q. Okay. So what has to happen is either that person
7 has to, on their own, write a supplement and provide
8 it, or that officer has to go and ask them for it.

9 A. Yeah, that's fair to say.

10 Q. Is every officer who's on the scene required to write
11 a supplement?

12 A. Not always.

13 Q. How do you decide who writes a supplement?

14 A. If they did something important. Just the mere fact
15 that someone was there doesn't necessarily mean that
16 they have to complete a report. It varies. I mean,
17 it varies from case to case or incident to incident,
18 you know, who would be required. And it may be that,
19 you know, there could be an internal -- so (coughing)
20 -- excuse me.

21 Take a search warrant, for example. You have
22 Special Response Team members that their job is to
23 secure a location and to keep that location secure
24 while others process the scene and collect evidence.
25 Sometimes their role could be to aid in searching.

1 Sometimes it may just be a security post. A Special
2 Response Team member that just stood in a yard and
3 didn't do anything that was security, I wouldn't
4 necessarily expect them to complete a supplemental
5 report.

6 However, in situations like that, they may
7 have to complete an internal memorandum or something
8 to that effect for a Special Response Team, but I've
9 never been a -- a -- ran the Special Response Team
10 for Southern Pines, so I -- I can't answer if they do
11 those types of things or not; everybody.

12 But just the mere fact of someone's presence
13 on a scene does not necessarily mean that they're
14 required to write a report.

15 MR. RUBERT-SCHEWEL: Let's also request any
16 reports written by the Special Response
17 Team.

18 BY MR. RUBERT-SCHEWEL:

19 Q. Is it SRRT or just SRT?

20 A. SRT.

21 Q. Okay. And so what you're saying is that it's
22 possible that SRT or an officer in SRT could have
23 written a report -- report about this incident and it
24 may not have gone into the incident report that was
25 written by Officer Lowery or Officer Perry.

1 A. Yeah. So, well, yeah, very possible. So they
2 wouldn't have written the -- like Lowery or Perry
3 would not have written a report for them --

4 Q. Right.

5 A. -- all. Now, could they list in their report what
6 someone else did? Sure. But they're not doing it
7 for someone. But, you know, if -- if you're asking
8 could someone have written something that wasn't a
9 supplement, so like an internal special response
10 document or something like that, it's -- yes, that is
11 possible.

12 Q. And for the supplemental reports that are written and
13 included in incident investigation reports for
14 investigations that you were overseeing at this time,
15 who is responsible for reviewing the supplemental
16 reports?

17 A. So I would do most of those. Sergeant Edwards,
18 during that time, would have -- have done some. Our
19 old system that we had during that time -- when I say
20 "our old system," our old records management system.
21 The vendor was -- it used to be OSSI. I think they
22 changed the name to, like, Central Square or
23 something to that effect. We went away from them in
24 October of 2019 and went to our current vendor.

25 But, anyway, during the -- the -- 2018, the

1 vendor at that time, I -- Sergeant Edwards couldn't
2 check my report. It had to be somebody of a higher
3 rank. So like deputy chief or the captain at the
4 time would be responsible for checking mine, but I
5 could check anybody below.

6 Now, with investigators, you're not -- the
7 grammar, if you will, is not as much of what you're
8 looking for, you know, in -- in those reviews or
9 everything, but it's -- it's still -- it was done
10 through the same -- same process.

11 Q. You're --

12 A. So to secondary review.

13 Q. -- you're looking for accuracy.

14 A. Sometimes. Again, I mean, some of those things can
15 be overlooked. You know, sometimes you're just
16 making sure that somebody that was there that you
17 were expecting -- expecting a report to be from was
18 completed.

19 Q. Well, I assume if you were also there and you saw
20 something in a report that was inaccurate or untrue,
21 you would correct that or have a conversation with
22 them about correcting that.

23 A. I would actually sometimes have conversations. I
24 wouldn't always make them correct it, and the reason
25 being is, you know, anytime -- we all -- we're all

1 human. We make mistakes. And you may see something
2 one way and later find out that it was this way. I
3 don't want them to go back and edit a report because
4 they made a mistake, but I want them to be able to
5 remember that they made a mistake and be able to
6 explain it later.

7 You know, I mean, that's -- that's just me.
8 So if I seen something that either I didn't catch or
9 that I thought to be wrong, I may not deny that
10 report just because of that. You know, I may let it
11 stand because those are their words. That's -- their
12 perception is their reality. But we would probably
13 have a con- -- more likely than not have a
14 conversation about that. You know -- you know, "Why
15 did you put this?"

16 Q. And -- and just to be clear, I mean, these reports
17 are going to the District Attorney, and the District
18 Attorney is basing their charging decision or their
19 decision to pursue this and indict based off of these
20 reports.

21 A. In a whole, yes.

22 Q. And the facts of these reports.

23 A. Yes.

24 Q. So, potentially, if a fact in this report is not true
25 or is wrong or is incorrect, that could cause someone

1 to be wrongfully arrested.

2 A. Is there a circumstance where, you know, what you
3 just said could be true? Yes. The mere fact that
4 someone after the fact makes an error in completing a
5 report, the arrest has already been made.

6 Q. Right, but that information is being passed to the
7 District Attorney, so it's important that it's
8 accurate.

9 A. Sure.

10 Q. But what you're saying is that there are certain
11 situations where even if something is inaccurate or
12 wrong, you still would not correct it.

13 A. I would address it. If it was something so egregious
14 that needed correcting, then -- then, yes.

15 Q. If someone had said in a report, "I found cocaine,"
16 and they didn't actually find cocaine.

17 A. If it was a lie, then I would have a serious problem
18 with that. If -- you know, and -- and that would be
19 dealt with accordingly --

20 Q. Uh-huh.

21 A. -- you know. But if it was an error or a
22 misstatement or something like that, you know, I
23 would ask, you know, the person, you know, "Why?"
24 You know, "What -- what happened here?" And if they
25 said, "Well, that's what I thought happened," if it's

1 nothing that affects the case, per se, or is
2 detrimental to the case, either way, then, you know,
3 we would just have that person prepared for that.

4 Q. So even if it was a mistake that is -- was a mistake
5 that could have caused someone to be wrongfully
6 arrested, you wouldn't necessarily correct it.

7 A. If it was a mistake that caused somebody to be
8 wrongfully arrested, yes.

9 Q. Okay. But you're saying if it's a minor mistake that
10 may have just been a difference of perception or
11 somewhere around the edges, that's not necessarily
12 something you would correct.

13 A. You know, it's -- it completely depends on the
14 circumstances of -- of what the -- the error, the
15 misconception, the mistake, on -- on what that is.
16 It completely depends on -- on the -- on -- you know,
17 on the -- the facts of it all, on what it is.

18 If -- if someone says "It's dark outside" and
19 it's not, and I ask them about it: "Did you mean to
20 put it's dark outside or did you mean to put it was
21 light outside," and they say, "I meant to put it was
22 dark outside," well, that could be a problem.

23 Q. Uh-huh.

24 A. But if I went to them and said, "You put it's dark
25 outside and it's -- it was light," and they were

1 like, "Well, I meant to put it was light," okay,
2 well, that's -- that's two -- two --

3 Q. Uh-huh.

4 A. -- two different reasons for what was written, you
5 know.

6 Q. Uh-huh.

7 A. And one I can live with; one I can't.

8 Q. Uh-huh. But that information is being passed to the
9 District Attorney.

10 A. Uh-huh.

11 Q. And in that hypothetical that you're giving us, if
12 this was a -- a case where, you know, later on in
13 that report they had written "And I had had a
14 conversation with a sole eyewitness who observed
15 someone from 30 feet away and it was light outside,"
16 that fact of whether it's dark or light is a very
17 important fact.

18 A. Yes.

19 MR. JONES: Object to form.

20 BY MR. RUBERT-SCHEWEL:

21 Q. Okay. So I just have two more questions and then
22 we'll take a break -- or two more series of
23 questions.

24 So a case that goes federal: Of your cases
25 that have gone federal, have you ever had an

1 experience where that case was later dismissed?

2 A. I don't know. I don't recall.

3 Q. Does the FBI -- or in -- in your experience, does the
4 FBI or the US Attorney's Office typically reach out
5 to you after a resolution of a case that went
6 federal?

7 A. What do you -- what do you mean, reach out to you
8 afterwards? Are you saying --

9 Q. Let's say --

10 A. -- made aware --

11 Q. -- let's say --

12 A. -- of an outcome of a case?

13 Q. Made aware, yeah.

14 A. Yes.

15 Q. So someone's sentenced, someone pleads guilty,
16 someone -- they usually update you on that.

17 A. Yes. Usually as part of federal prosecution, you're
18 kept up to speed, normally, on what the outcome of
19 the case is.

20 Q. And in your experience and when you were a
21 supervisor, did Southern Pines police officers ever
22 testify in a federal grand jury?

23 A. Yes.

24 Q. Did Officer Lowery or Officer Perry ever testify in a
25 federal grand jury?

1 A. I'm certain they have.

2 Q. Did they testify in a federal grand jury in Operation
3 Leader?

4 A. I believe they did.

5 Q. Did they testify in a federal grand jury related to
6 Lee Harris, Sr.?

7 A. I believe they did.

8 Q. And that's both officers?

9 A. I do not know.

10 Q. But you believe at least one of them did.

11 A. I believe so.

12 Q. Do you believe Officer Perry testified in a federal
13 grand jury against Lee Harris, Sr.?

14 A. I'm not sure.

15 Q. But you believe either Perry or Lowery did.

16 A. I believe so. And what I mean by "I believe so," I
17 don't know if someone else did, but I'm -- I -- I
18 feel confident that it was one of the two. I'm not
19 confident of which one or was it both.

20 Q. Okay. Are you familiar with Oliver Hines?

21 A. I know who Oliver Hines is.

22 Q. How do you know him?

23 A. He's a former employee of the Town of Southern Pines.
24 Participated in a search warrant of his home
25 previously when I worked for the Moore County

1 Sheriff's Office. Was involved in a federal
2 investigation of his son.

3 Q. Has Oliver Hines ever worked as a confidential
4 informant for Southern Pines Police Department?

5 A. Not that I'm aware of.

6 Q. Was Oliver Hines involved at all in Operation Leader?

7 A. Not at all.

8 Q. And you would have known that.

9 A. Confidential informants can only be used by Southern
10 Pines officers after being vetted, and Oliver Hines
11 was never used under my tenure.

12 MR. RUBERT-SCHEWEL: All right. Let's take a
13 break. Is that okay?

14 THE WITNESS: Yeah.

15 (Recess from 11:47 a.m. to 12:07 p.m.)

16 BY MR. RUBERT-SCHEWEL:

17 Q. All right. Good afternoon, Captain Marsh.

18 A. Thank you.

19 Q. Sorry we don't have lunch today, but we can do
20 that in a little bit, I think.

21 In any of your roles at the Southern Pines
22 Police Department, were you aware of any complaints
23 against Officer Lowery?

24 A. Not that I recall.

25 Q. Were you aware of any complaints against Officer

1 Perry?

2 A. During the times I supervised him I'm not aware of
3 any.

4 Q. During any other times.

5 A. When this case was filed, I was made aware -- I think
6 there was an IA that was done. I don't even think I
7 was employed by the department at the time, but I
8 don't -- I don't recall the facts of it.

9 Q. Have you ever heard of anyone complain of Officer
10 Perry using unreliable confidential informants?

11 A. Not that I recall, no.

12 Q. Have you ever heard anyone complain about Officer
13 Perry planting drugs on innocent citizens?

14 A. No.

15 Q. How about fabricating drug charges?

16 A. No.

17 MR. JONES: Can we go off the record for a
18 moment?

19 MR. RUBERT-SCHEWEL: Yes.

20 (Discussion off record at 12:10 p.m.; back on
21 the record at 12:10 p.m.)

22 MR. JONES: Sorry about that, Abe.

23 BY MR. RUBERT-SCHEWEL:

24 Q. Have you ever had a situation in your experience
25 where you had a suspect under arrest or a witness who

1 you were interviewing and where you told them that if
2 they did not give information against someone else
3 they would be arrested?

4 A. Not that I can recall, no.

5 Q. And -- and, in your opinion, would that be
6 constitutional, legal police work?

7 A. Can you repeat the question?

8 Q. Sure. So you -- you are -- you're investigating a
9 case. There is a witness who you believe is a
10 witness to a crime. You want that witness to work
11 with you to help you, to assist you in some way.
12 Would it be legal to threaten to arrest that person
13 if they do not provide you with information?

14 A. Based on the way you worded it, and I -- no, I would
15 say that would not be legal.

16 Q. Are officers permitted to lie to witnesses?

17 A. Interviewing a witness, yes.

18 Q. Are officers permitted to lie to defendants or
19 suspects?

20 A. To some degree, yes.

21 Q. So what was wrong or illegal about my hypothetical?

22 A. Well, it would depend on the circumstances. I mean,
23 is this witness, you know -- in my mind I'm thinking
24 of, you know, someone who has committed a crime. And
25 if they're not willing to -- to -- for lack of a

1 better word, work off the charges, then they would be
2 crime -- charged with the crime that they actually
3 committed.

4 But to the extent that if you don't either
5 cooperate or work -- you know, however you worded
6 that -- you know, there would have to be a crime
7 committed.

8 Q. Okay. So you -- it -- it would be wrong or -- or I
9 guess what my question was, it would be illegal to
10 threaten someone who had not committed a crime with
11 an arrest if they did not give information.

12 A. If they hadn't committed a crime, there would be no
13 way to arrest them.

14 Q. Right. And I'm not saying actually arresting them;
15 I'm saying threatening to arrest them.

16 A. I mean, if there's not a crime, whether it's illegal
17 or not, I'm not sure. Would it -- could it be
18 ethically wrong to say something like that? It's
19 possible. I mean, I don't completely understand the
20 circumstance you're describing.

21 Q. So you're investigating a case. Let's say it's a
22 drug investigation. You go to a house. You -- there
23 -- there's a mother at the house who's there with her
24 son. You believe the son is trafficking drugs from
25 that location or near that location. You want more

1 information from the mother. You don't believe the
2 mother has actually committed a crime. Would it be
3 legal to threaten the mother with arrest if she does
4 not provide information on her son?

5 A. Possibly, yes.

6 Q. Would it --

7 A. Did you say would it be legal or illegal? I'm sorry.

8 Q. Legal.

9 A. Would it be legal? It's possible.

10 Q. Would you encourage your officers to do that as their
11 supervisor?

12 A. It would depend on the circumstance.

13 Q. Have you ever encouraged officers to do that?

14 A. No. Not that I recall.

15 Q. Have you ever done that in your career?

16 A. I don't recall.

17 Q. Have you ever lied to witnesses in your career?

18 A. Yes.

19 Q. Have you ever lied to suspects?

20 A. Yes.

21 Q. Have you encouraged your officers or trained your
22 officers to lie to suspects or witnesses?

23 A. Encouraged, no.

24 Q. So -- so just so we're clear, the answer to my
25 question is that, yes, it may be legal to threaten

1 someone with an arrest even if they are innocent.

2 A. If they are -- if you know they're innocent, no. I
3 -- I don't know if it would be illegal. I -- I don't
4 know the answer to that, whether it would be legal or
5 illegal to do it. I mean, that -- that's my answer.
6 I don't know.

7 Q. Okay. And you also -- to your knowledge, you have
8 never heard of any officers in the Southern Pines
9 Police Department doing that.

10 A. Doing that? Just for clarification, my
11 understanding, "doing that" meaning threatening
12 someone they know to be innocent with an arrest.

13 Q. If they do not provide information.

14 A. I don't know if that -- I mean, if that's ever
15 happened, you know, did that person commit a crime, I
16 don't know.

17 Q. No, I'm not asking you that. I'm asking you --

18 A. Am I aware?

19 Q. -- if ever you're aware of that ever happening at the
20 Southern Pines Police Department.

21 A. I -- I don't recall that ever happening. I don't
22 know.

23 Q. Okay. If one of your officers reported that they did
24 that and they came to you and they said, "I just did
25 that," would you discipline them for that?

1 A. I would have to research it.

2 Q. Do you know why this investigation was called
3 Operational Leader?

4 A. I do not.

5 Q. Do you know what agencies were involved in this
6 investigation?

7 A. Southern Pines Police Department, Aberdeen Police
8 Department, FBI, Lee County Sheriff's Office. There
9 could be others that -- I'm sure there are -- that I
10 don't remember, and agencies named don't necessarily
11 take that as they were involved the entire time. It
12 could have been just for one aspect of it or -- or
13 something to that effect.

14 Q. Was there a mutual aid agreement for Operation
15 Leader?

16 A. Not for this investigation. I remember a mutual aid
17 agreement with Lee County Sheriff's Office. I
18 remember a mutual aid agreement with Aberdeen Police
19 Department. Actually, Aberdeen Police Department --
20 for sure Aberdeen Police Department.

21 MR. RUBERT-SCHEWEL: I'm not sure if we've
22 received those or not, but we'll follow up
23 and request those.

24 MR. DAVIS: I believe those are in there as
25 well.

1 MR. RUBERT-SCHEWEL: Okay.

2 BY MR. RUBERT-SCHEWEL:

3 Q. And just for the record, what does a mutual aid
4 agreement allow you to do as part of an
5 investigation?

6 A. The best way I can describe it is the state statute
7 allows for officers of a jurisdiction to request the
8 assistance of officers in another jurisdiction, or
9 vice versa, to conduct an investigation, complete
10 tasks, whatever the case may be. With -- with mutual
11 aid, you know, in certain circumstances gives you the
12 same authority as the jurisdiction that's requesting
13 it.

14 Q. Does it give you authority to go outside of your
15 jurisdiction without that agency specifically
16 requesting it?

17 A. I don't know how -- I'm not sure I understand.

18 Q. So you have a mutual aid agreement with Aberdeen.
19 You're investigating a drug crime. Could you go and
20 surveil a location in Aberdeen without Aberdeen
21 requesting you to do that?

22 A. Yes.

23 Q. Because you have that mutual aid agreement for that
24 investigation.

25 A. For conducting surveillance, you don't need a mutual

1 aid agreement. Anywhere that you can legally be, you
2 can be. You're not conducting --

3 (A thump was heard.)

4 A. -- an enforcement -- an enforcement action.

5 MR. JONES: That was a bird that --

6 THE WITNESS: Poor bird.

7 MR. JONES: -- just face-planted.

8 BY MR. RUBERT-SCHEWEL:

9 Q. What about for executing a search warrant?

10 A. Depending upon the circumstances. You have a one
11 mile ex- -- beyond your jurisdiction, but the safe
12 bet is to have a mutual aid in place for -- for
13 something of that effect. Those were -- I've had
14 quite a bit of experience with those types of
15 situations.

16 Q. Okay. And -- and -- and so you want to execute a
17 search warrant in Aberdeen. You have a mutual aid
18 agreement in place. Do you still need Aberdeen Chief
19 of Police to call you up and say, "We need your help
20 coming in to execute this"?

21 A. There should be a request.

22 Q. So they have to make a request. You can't just go on
23 your own, apply for a search warrant and say, "We
24 have this agreement with Aberdeen. We're going to go
25 into Aberdeen and execute this search warrant."

1 A. That wouldn't be a good practice.

2 Q. They have to ask you to do it.

3 A. (Nodded head affirmatively.)

4 COURT REPORTER: Yes?

5 THE WITNESS: Yes, sorry.

6 BY MR. RUBERT-SCHEWEL:

7 Q. Did you know Lee Harris, Sr., prior to this
8 investigation?

9 A. Yes. Yes.

10 Q. What did you -- how -- how did you know him?

11 A. So in 2014 when I was assigned to the Investigations
12 Division, there were at least three open homicide
13 cases that I was assigned, cold cases, to -- to work.
14 One of those homicide cases was of Maurice White, who
15 was murdered at Leather Pockets in 2012 or '13. I
16 believe '13.

17 On at least one occasion, Mr. Harris
18 accompanied an individual to the police department
19 for an interview, demanded to be present during the
20 interview as -- as if he was, like, an attorney.

21 Sergeant Edwards worked with me on those cases
22 and had previously been assigned those cases; that he
23 had informed me that that had happened during the
24 initial investigation. I believe that was my first
25 interaction with Mr. Harris.

1 Q. And did you feel like Mr. Harris's involvement in any
2 way stymied or limited your investigation?

3 A. I felt that that was the intention.

4 Q. And were you able to -- did you close that case?

5 A. Yes.

6 Q. And you -- so you solved that case.

7 A. Yes.

8 Q. So -- and the witness who Mr. Harris came in with --

9 MR. RUBERT-SCHEWEL: I'm sorry. Off the
10 record one second.

11 (Off the record at 12:25 p.m. and back on the
12 record at 12:26 p.m.)

13 BY MR. RUBERT-SCHEWEL:

14 Q. I've just been informed from Mr. Harris that the
15 witness's name was Curtis Stubbs, Jr. Do you recall
16 if you received information later on from that
17 witness?

18 A. I don't recall.

19 Q. But even without that information, you were able --
20 well, strike that question.

21 Why did you feel that it was Mr. Harris,
22 Sr., 's intention to limit your investigation?

23 A. If I recall, Mr. Stubbs had been shot that night.
24 Several people had. Mr. Stubbs was being treated as
25 a witness. Mr. Harris, with Mr. Stubbs being --

1 really not saying anything in the lobby, was very
2 demanding that he be present for -- for any
3 interviews. It just didn't make sense. That wasn't
4 a normal course of business.

5 Q. Well, I mean, Mr. Stubbs could have had an attorney
6 present, right?

7 A. Could have.

8 Q. If he'd -- if he'd chosen to?

9 A. If he wanted to, he could have.

10 Q. But do you -- do you recall Mr. Stubbs' age at the
11 time?

12 A. He was an adult, but no.

13 Q. So why -- I guess, again, what about Mr. Harris, Sr.,
14 being present, what about that do you feel like was
15 limiting your investigation?

16 A. I felt as if he wanted to control what was being
17 said.

18 Q. Any reason -- did -- what made you feel that way?

19 A. His -- again, I wasn't working there. I was going
20 off of what Sergeant Edwards had informed me and
21 Lieutenant Hardy, that he was making himself present
22 as they were trying to interview people and was, you
23 know, not encouraging people to cooperate. And then
24 with him showing up --

25 I don't completely recall if it was just

1 Curtis Stubbs or if it was another co-defendant in
2 this drug case who was also interviewed. I just
3 remember having that feeling.

4 Q. By "this drug case," do you mean Operation Leader?

5 A. Yes.

6 Q. And just -- do you mean a co-defendant in Operation
7 Leader who was interviewed at some earlier time?

8 A. Yes.

9 Q. Okay. So not in 2018.

10 A. No.

11 Q. Okay. Were you present for the Curtis Stubbs
12 interview?

13 A. I believe I'm the one who conducted it, but I --

14 Q. Okay.

15 A. -- I'm not a hundred percent sure.

16 Q. So -- so I just want to make sure I'm understanding
17 everything. You're saying there were some earlier
18 interviews that Edwards and Hardy completed and they
19 told you about those --

20 A. Yes.

21 Q. -- but you were also present and you conducted, you
22 think, the Stubbs interview where Mr. Harris was
23 present.

24 A. Yeah, I -- it was so long ago I -- I'm not
25 comfortable giving you an answer on that. It was so

1 long ago.

2 Q. And so just generally, your impression was that
3 Mr. Harris, Sr., had impeded your investigation.

4 A. The -- some of the individuals I was trying to
5 interview, so Mr. Stubbs being one that was being
6 interviewed as a witness -- he was a victim. And
7 with Mr. Harris, you know, being demanding of -- of
8 being present for that interview when, you know, this
9 gentleman is an adult, he wasn't being treated as an
10 offender, yes, he was very vocal about not wanting
11 the interview to take place without Mr. -- or without
12 him being present.

13 Q. Did he interrupt at all during the interview?

14 A. I don't remember if we conducted the interview
15 without Mr. Harris or if he was in there. I don't
16 remember.

17 Q. Did Mr. Harris say anything to you personally?

18 A. I don't -- I -- I don't remember.

19 Q. Do you remember saying anything to Mr. Harris?

20 A. I don't remember.

21 Q. Any other interactions or memories or recollections
22 about Mr. Harris, Sr., prior to Operation Leader?

23 A. Not that I recall.

24 Q. Any -- do you remember being told anything by any
25 other officers or community members about Mr. Harris,

1 Sr.?

2 A. Not that I remember.

3 Q. Okay. What about Mr. Harris, Jr.?

4 A. My time working in Southern Pines when I started my
5 career at the sheriff's department, when I worked
6 narcotics, he was the subject of investigations
7 there. I've heard his name pretty much my entire
8 career.

9 Q. And those investigations, were they typically drug
10 investigations?

11 A. Yes, sir.

12 Q. And maybe associated violence?

13 A. Yes, sir.

14 Q. And when you heard his name, did you ever hear his
15 father's name associated with it?

16 A. I don't remember.

17 Q. You were the supervisor of Operation Leader?

18 A. I was the Investigations Division supervisor during
19 that time, during the end of the investigation.

20 Q. So would that make you the supervisor of every
21 investigation in that division?

22 A. During that time I was the supervisor of the
23 division.

24 Q. Were you the supervisor of Operational Leader?

25 MR. JONES: Object to form.

1 BY MR. RUBERT-SCHEWEL:

2 Q. Were you the supervisor of the investigation
3 Operation Leader?

4 MR. JONES: Same objection.

5 A. I really don't know how to answer that. You know, my
6 narcotics detectives, it was their case and I
7 supervised them. So if by default, then, yes. And
8 that's really the only way I know how to -- to answer
9 that.

10 BY MR. RUBERT-SCHEWEL:

11 Q. We kind of -- we discussed your responsibilities
12 previously as -- as supervisor, but what -- for this
13 investigation, what were your responsibilities as
14 supervisor of the division for the Operation Leader
15 investigation?

16 A. Case management, my experience working drug cases,
17 strategy would be talked from time to time, time
18 management, to assist with surveillance if needed, to
19 allocate, you know, resources and -- and manpower to
20 what the case may need.

21 Q. Review incident reports?

22 A. Yes.

23 Q. Review supplemental reports --

24 A. Yes.

25 Q. -- for accuracy and truthfulness?

1 A. Yes.

2 Q. Did you meet with the detectives running the
3 investigation?

4 A. Yes.

5 Q. How often would you say you did that?

6 A. I don't know.

7 Q. Do you have -- are you required or do you -- when you
8 were supervisor, did you have set meeting times with
9 detectives?

10 A. Set? No.

11 Q. Okay. So you wouldn't meet once a week or once every
12 other week?

13 A. We would meet very often, but set times, no.

14 Q. And previously I think you said that you were
15 required to do supplemental reports within ten days?

16 A. That was the guideline in the general order was a
17 supplemental -- supplemental report would be
18 completed. Now, this is for an open investigation to
19 where a report number's already been generated.

20 Q. Uh-huh.

21 A. That -- that was always something. You had to stay
22 on top of paperwork.

23 Q. Okay. But there's no similar guideline about how
24 often you have to meet with your detectives in an
25 open investigation.

1 A. No.

2 Q. Did you review surveillance reports?

3 A. I'm not familiar with what a surveillance report is.

4 Q. Give me one second.

5 MR. RUBERT-SCHEWEL: Nichad, can you pull up
6 the discovery?

7 MR. DAVIS: Gotcha.

8 MR. RUBERT-SCHEWEL: Okay, I got it. I think
9 I got it right here.

10 BY MR. RUBERT-SCHEWEL:

11 Q. So I'm going to show you Plaintiff's Exhibit P.

12 (Plaintiff's Exhibit P was identified.)

13 MR. RUBERT-SCHEWEL: And I have a copy for
14 you, Glenn, and the reporter can have --

15 MR. JONES: Thank you.

16 MR. RUBERT-SCHEWEL: And this is -- I'm sorry,
17 it's not marked, but that is P. Actually,
18 you know what? I can give you this copy
19 that is marked.

20 COURT REPORTER: Perfect.

21 A. Thank you.

22 BY MR. RUBERT-SCHEWEL:

23 Q. So that is -- well, can you just read the top of that
24 and tell me what that is?

25 A. OCA 2018 00199.

- 1 Q. And can you read the -- the typed part directly below
2 that?
- 3 A. Case supplemental information. It gives a date and
4 it talks about wood surveillance at Mr. Harris's
5 residence.
- 6 Q. So what is that document?
- 7 A. Without seeing the original --
- 8 Q. Well, I'm not saying -- asking you what's in the
9 document. I'm just saying -- is that a supplemental
10 report?
- 11 A. I don't know.
- 12 Q. Have you ever seen that document?
- 13 A. I don't remember if I've seen it or not. The -- some
14 of the statements made sound very familiar, but --
15 (no further response).
- 16 Q. So --
- 17 A. I'm not a hundred percent sure.
- 18 Q. Just so I'm clear -- can I -- can I see it?
- 19 A. Sure.
- 20 Q. I mean, it says on it "Case Supplemental
21 Information," so I was assuming that this was a
22 supplemental report, but you're telling me it's not
23 one.
- 24 A. It doesn't look like a supplemental report.
- 25 Q. So why would it ever be typed -- in what situation

1 would you type something up in this format?

2 A. Maybe notes.

3 Q. Okay. So these are officers' notes.

4 A. Maybe. I -- I don't -- they're not mine, so I don't
5 know.

6 Q. Okay. And for practical purposes, after an officer
7 takes notes, will sometimes they then type it up and
8 put it in a supplemental report?

9 A. I would say that that'd be safe to say.

10 Q. Not always, but that can happen.

11 A. Sure.

12 Q. Okay. So I'm going to show you another exhibit.
13 This is T.

14 (Plaintiff's Exhibit T was identified.)

15 Q. I'm sorry, I think this is the second page to T.
16 What is this document?

17 A. Supplemental report.

18 Q. Okay. And so how is this document created?

19 A. Through our records management system or our previous
20 records management system.

21 Q. Which is a computer system.

22 A. Yes.

23 Q. So an officer goes into your computer system. They
24 click "Supplemental Report" and they type that up.

25 A. Yes.

1 Q. Now, can you tell me which officer created that
2 supplemental report?

3 A. That was our civilian, Victoria Price.

4 Q. And you were her supervisor?

5 A. Yes.

6 Q. And what's the date of that?

7 A. February 21st, 2018, was the date that it was
8 created, I believe.

9 Q. Okay. And what -- what date did you review it?

10 A. It says February 22nd, 2018.

11 Q. Okay. So back to what I believe is -- is Exhibit P.
12 Exhibit P, just so we're clear, is not a supplemental
13 report.

14 A. I don't think so.

15 Q. To you, that appears to be officers' notes.

16 A. It's a guess only on my part, but that --

17 Q. Okay.

18 A. -- would be my assumption.

19 Q. And as you sit here today, do you recall seeing that
20 document? Not the words in that document, but do you
21 recall seeing that document?

22 A. I -- I don't remember.

23 Q. Okay. During this investigation, was it your --
24 during Operational Leader, was it your practice to
25 review, or did you review officers' notes?

1 A. No.

2 Q. Did you review officers' supplemental reports?

3 A. Yes. On several occasions I reviewed their
4 supplemental reports.

5 Q. When an officer conducted surveillance, would an
6 officer be required to put that in a supplemental
7 report?

8 A. Not always.

9 Q. So as the supervisor, you would not always have known
10 about everything that was observed during
11 surveillance.

12 A. Every single thing? Probably not.

13 Q. Because they might not have told you. Yes?

14 A. That's possible.

15 Q. Or it might have not been included in a supplemental
16 report.

17 A. Also possible.

18 Q. What was your -- what's the first involvement that
19 you recollect with this investigation?

20 A. Oh. I knew -- I knew prior to becoming the
21 Lieutenant in Investigations that there was an -- a
22 like -- a drug investigation, a long-term case
23 ongoing. I didn't know all the details.

24 When I became Lieutenant of Investigations,
25 Lieutenant Hardy -- I worked with him for probably a

1 month -- he brought me up to speed as did Detective
2 Perry and Detective Lowery. Shortly after Lieutenant
3 Hardy retiring, end of October, first part of
4 November of '17, I remember having a meeting with
5 Lowery and Perry and asking them what is the end
6 game, what's -- when is it coming to an end. I
7 believe that was my first involvement or knowledge of
8 it.

9 Q. I'm sorry. Approximately when was that?

10 A. I'm -- this is a guess.

11 Q. Yeah.

12 A. October, November of '17.

13 Q. And when did you become supervisor?

14 A. October -- first part of October of 2017.

15 Q. Okay. And what was their response when you asked
16 them that question?

17 A. To gather as much evidence as they could.

18 Q. So once they'd gathered all the evidence they could,
19 then it would come to an end.

20 A. Yes.

21 Q. Were you involved at all in surveillance in Operation
22 Leader?

23 A. Yes.

24 Q. What was your involvement in surveillance?

25 A. What I can remember, driving to Greensboro,

1 Charlotte. I don't remember -- I mean, I can't
2 remember every single time. Monitoring trackers.

3 Q. Okay. Let -- let's back up. Why were you -- who
4 were you surveilling in Greensboro and Charlotte?

5 A. I believe it was Lee Harris, Jr.

6 Q. Okay. And what type of trackers were you monitoring?

7 A. They were trackers that were installed on some
8 vehicles.

9 Q. Were any trackers installed on Lee Harris, Sr.'s,
10 vehicles?

11 A. No.

12 Q. Why not?

13 A. I don't recall. We only had two trackers, and they
14 were already out. We didn't have anymore. They're
15 expensive. But I don't know if we would have had
16 reason. I don't know.

17 Q. So at the time at the Southern Pines Police
18 Department in the Investigations Division, y'all had
19 two trackers.

20 A. The best I recall. I remember us having one. I
21 believe we purchased another when I became
22 lieutenant.

23 Q. And these are GPS trackers.

24 A. Yes.

25 Q. Do you have to get a warrant to put a GPS tracker on

1 someone's car?

2 A. You have to get a process, yes.

3 Q. Okay. So you have to get court approval.

4 A. Yes.

5 Q. What about surveillance of 1090 West Indiana Avenue?

6 Did you participate in that at all?

7 A. I don't recall.

8 Q. What about 811 West New York?

9 A. By video, surely.

10 Q. So what do you mean by that?

11 A. Pole camera that was installed across the street.

12 Q. And you operated it or you watched that?

13 A. Watched.

14 Q. Okay. Tell me how that pole camera works. Does it

15 -- is it running 24/7?

16 A. I'm not the person to ask on that. I don't have all

17 the details of how it works.

18 Q. Well --

19 A. I know it's not ours.

20 Q. -- when you watch that footage, it looks like the

21 pole camera is moving, right?

22 A. Uh-huh. Yes.

23 Q. And is that moving based off of an officer

24 controlling it, or is it moving as -- is it

25 motion-sensored?

- 1 A. I believe both, but, again, I'm not versed enough in
2 that camera system to --
- 3 Q. Were you ever out in the woods operating it?
- 4 A. No.
- 5 Q. Were you ever out in the woods as it was being
6 operated at 803 -- sorry -- 811 West New York?
- 7 A. Not that I recall.
- 8 Q. To your recollection, did you -- did you review all
9 of the surveillance taken at that location?
- 10 A. All? No.
- 11 Q. How did you determine what to review?
- 12 A. What I was told about by Officer Perry or Lowery;
13 what I was shown.
- 14 Q. And did you review that when you started as
15 supervisor?
- 16 A. I don't remember.
- 17 Q. Well, did you review it after the execution of the
18 search warrant on the -- on the various locations?
- 19 A. I don't remember.
- 20 Q. So you think it's possible that the search warrant
21 could have been executed, all these arrests could
22 have been made, and then you reviewed the
23 surveillance footage after that?
- 24 A. Could I have reviewed surveillance footage after
25 that? Yes.

1 Q. Okay.

2 A. Did I wait -- (clearing throat) -- excuse me. Did I
3 wait until then to review any of it or -- or all of
4 it? You know, I'm not sure I exactly understand your
5 -- your question, but I did not wait for the
6 investigation to be over before I reviewed video.

7 Q. So you did review some video prior to the execution
8 of the search warrant --

9 A. I had seen some of the video.

10 Q. -- from February 20th of 2018.

11 A. Yes, I had seen some of the video prior to.

12 MR. JONES: Just try and wait for him to
13 finish the question so you guys aren't
14 talking over each other.

15 THE WITNESS: Sorry.

16 MR. RUBERT-SCHEWEL: No, I'm sorry. I
17 interrupted you a little bit.

18 BY MR. RUBERT-SCHEWEL:.

19 Q. How about 803 North Sycamore Street? Were you ever
20 outside in the woods conducting surveillance at that
21 location?

22 A. Not that I recall.

23 Q. And I know earlier we discussed that you did not
24 review notes -- officers' notes for this
25 investigation. Would anyone have been responsible

1 for -- for reviewing officers' notes?

2 A. Not that I'm aware of.

3 Q. So we've established that the FBI was involved in
4 this investigation. What was your first interaction
5 with any FBI agents as part of this investigation?

6 A. I don't remember.

7 Q. Did you interact with any FBI agents as part of this
8 investigation?

9 A. I remember Mike Martin, Agent Mike Martin being at
10 the police department.

11 Q. For a meeting?

12 A. I just remember him being there about this case from
13 time to time, but that's -- that's really all I can
14 tell you.

15 Q. What was the FBI's role in this investigation?

16 A. I believe that the pole camera belonged to them that
17 was installed across from West New York Avenue.

18 Q. Are you aware of any other evidence or interviews
19 that they conducted?

20 A. Yes. After the search warrants were all executed in
21 February, I know Mike Martin conducted some
22 interviews.

23 Q. With the defendants?

24 A. I don't know who all he interviewed, but I do know
25 that he did conduct some.

1 Q. Have you seen those interviews or heard those
2 interviews?

3 A. I think I have seen some, but I don't remember who or
4 when or anything to that nature. He could have
5 interviewed everybody. I -- I don't recall.

6 MR. RUBERT-SCHEWEL: Glenn, do we have those
7 interviews?

8 MR. JONES: The ones for the -- during the
9 Harris, Jr.? I think there are additional
10 interviews of witnesses. I don't believe
11 the ones -- I don't believe we've produced
12 ones that weren't --

13 MR. RUBERT-SCHEWEL: Related to Mr. --

14 MR. JONES: -- related to Mr. Harris --

15 MR. RUBERT-SCHEWEL: So all --

16 MR. JONES: -- Sr.'s.

17 MR. RUBERT-SCHEWEL: Okay. Okay. But we have
18 the Harris Senior FBI interview.

19 MR. JONES: I would have to go back and see.
20 I don't recall if he was interviewed by --

21 MR. RUBERT-SCHEWEL: Okay. We'll
22 double-check.

23 MR. JONES: -- the FBI. But, yeah, I'll --
24 I'll -- I'll check. And to the extent that
25 any of that exists, I'll -- I'll confirm

1 whether we've produced it or not.

2 MR. RUBERT-SCHEWEL: Okay. Thanks. And we'll

3 -- we'll double-check too.

4 MR. JONES: Sure.

5 MR. RUBERT-SCHEWEL: We may have missed it. I

6 -- I think I've seen it.

7 BY MR. RUBERT-SCHEWEL:

8 Q. Okay. So -- and I'm sorry. This one I have not
9 labeled or separated enough, but I think everyone
10 knows what this is. So -- well, before I show you
11 this, any other FBI agents whose names you recall who
12 were involved in the investigation other than Mike
13 Martin?

14 A. I don't remember.

15 Q. Okay. All right. So Mr. Harris's home was searched
16 on February 20th of 2018. I'm showing you the
17 application for a search warrant. This is Exhibit B.

18 MR. RUBERT-SCHEWEL: And, I'm sorry, this is
19 not marked. Glenn, I think this is a full
20 copy of it as well.

21 (Plaintiff's Exhibit B was identified.)

22 BY MR. RUBERT-SCHEWEL:

23 Q. Do you -- have you -- do you recognize this document?

24 A. It looks familiar.

25 Q. Did you -- so you -- you think you've seen this

1 previously?

2 A. I need to read through --

3 Q. Sure. Take your time.

4 A. -- the document itself.

5 Q. Take your time.

6 A. It -- but it does look familiar. (Witness reviews
7 document.) This looks to be the affidavit for
8 Sergeant Perry's search warrants.

9 Q. Did -- did you help prepare this document?

10 A. No.

11 Q. Did you review this document prior to the
12 application?

13 A. I believe so.

14 Q. Did you make any changes to the document?

15 A. I don't recall. Can I -- did I make any changes to
16 the document? No. I don't recall if I requested any
17 changes to be made.

18 Q. So was it your typical practice, when reviewing a
19 report, to request changes to be made and not make
20 them on your own?

21 A. You -- so we're talking about an affidavit, but
22 you're saying a report.

23 Q. Or an affidavit.

24 A. I would never make changes on my own.

25 Q. To --

- 1 A. Unless it was mine.
- 2 Q. Okay. So -- and -- and that's -- for an affidavit
- 3 you would never make changes on your own. What about
- 4 a report?
- 5 A. I would not change someone else's report.
- 6 Q. Okay.
- 7 A. I would have them change it.
- 8 Q. Okay. But you would discuss it with them in certain
- 9 instances and -- and talk to them about it.
- 10 A. Usually, yes.
- 11 Q. Okay. So at this time of the investigation, this is
- 12 February 20th, 2018. At this point, did -- based on
- 13 what you knew, did you believe that there was
- 14 probable cause to arrest Lee Harris, Sr.?
- 15 A. Prior to February 20th?
- 16 Q. Well, prior to the search warrant being executed.
- 17 A. I don't recall. I don't think so.
- 18 Q. You do not think so. Okay.
- 19 A. To clarify, you asked prior to executing of the --
- 20 Q. Yes.
- 21 A. -- search warrants, right?
- 22 Q. Yes. After the execution of the search warrant on
- 23 February 20th, at that point once the search was
- 24 completed, did you believe that there was probable
- 25 cause to arrest Lee Harris, Sr.?

1 A. Yes.

2 Q. For what?

3 A. Possession of narcotics.

4 Q. What about trafficking?

5 A. I don't recall the weights. I do believe it was a
6 trafficking amount.

7 Q. And what were the facts that led you to that
8 conclusion?

9 A. During the search of Mr. Harris's home, a Cadillac
10 parked outside the residence, covered up outside his
11 bedroom end of the house, that's where narcotics were
12 found. The Cadillac had a license plate that, when
13 ran, came back to him. It was an expired plate, but
14 nonetheless, it was registered to him.

15 Detective Perry was interviewing Mr. Harris, I
16 believe in the driveway. At some point I believe
17 before the drugs were found -- maybe the drugs had
18 already been found. I asked about keys belonging to
19 that Cadillac, and Mr. Harris took me into his
20 bedroom, gave me a key ring, and it had Cadillac keys
21 on it. I remember going to the Cadillac and that key
22 turning the ignition switch. Didn't turn it -- like
23 the car wouldn't run, but it would operate the
24 ignition switch.

25 After Perry's conversation with Mr. Harris, he

1 and I conferred. We also spoke with Lowery, who I --
2 if I recall, was on Indiana where Junior was
3 arrested. Mr. Harris, Sr., had said to Officer Perry
4 in his interview that his son had not been to his
5 home in quite some time. I believe weeks or months.
6 We knew that to be untruthful based upon wood
7 surveillance to where Mr. Harris interacted with his
8 son in the yard.

9 And, again, it -- Junior, throughout this
10 investigation, had other locations to store his
11 narcotics. He had no reason to store narcotics at
12 Sycamore Street. It only made sense for those
13 narcotics to be under the care and control of Lee
14 Harris, Sr.

15 He had a storage unit that only -- "he" being
16 Junior. He had a storage unit that only he had
17 access to. There was no reason to store any other
18 drugs. And with Mr. Senior being deceptive about his
19 son even being at the home, led, you know, my opinion
20 to believe that they belonged to him.

21 Q. Okay. So just to summarize, the -- the main facts
22 that led you to your probable cause decision were
23 drugs in the Cadillac. Yes?

24 A. Yes.

25 Q. Keys to the Cadillac found in the bedroom --

- 1 A. Yes.
- 2 Q. -- that -- that turned the ignition.
- 3 A. Yes.
- 4 Q. Did -- did the keys also operate the locks?
- 5 A. I don't recall. I -- I do know that they did not
- 6 operate the trunk. The trunk had to be forced open.
- 7 I believe they operated the door locks, but without
- 8 reviewing my supplement --
- 9 Q. Uh-huh. Okay. Well, we'll -- we'll -- I'll -- I'll
- 10 show you that in a second.
- 11 A. Okay.
- 12 Q. And then the other big factor for you was that you
- 13 believed that Mr. Harris had been deceptive about Lee
- 14 Harris, Jr., staying at his location or his home.
- 15 A. I knew he had been deceptive.
- 16 Q. Okay. And you knew that based off of what Officer
- 17 Perry told you.
- 18 A. Based upon the interview he just had with him, yes.
- 19 Q. Were you present for that interview?
- 20 A. No.
- 21 Q. So -- so Officer Perry told you, "He just lied to me
- 22 about Lee Harris, Jr., being present."
- 23 A. Yes.
- 24 Q. And that contributed to your decision.
- 25 A. Wasn't a -- the deciding factor, but it was part of,

1 you know, the -- the process of coming to that
2 conclusion.

3 Q. Okay.

4 A. In addition to Mr. Harris, his knowledge of the trunk
5 not operating on the Cadillac, his knowledge of a
6 door being open on the Cadillac, all things that, you
7 know, Detective Perry relayed to me when we were
8 conferring of, you know, what -- what all was -- was
9 taking place.

10 Q. Okay. In addition to the fact that the license plate
11 came back to him?

12 A. (Nodded head affirmatively.)

13 Q. Yes?

14 A. Yes. I'm sorry.

15 Q. And then also in addition to the fact that Harris,
16 Jr., had other locations where he could have stored
17 the drugs.

18 A. Yes. Yes.

19 Q. Okay. Any other facts that you recall that were
20 relevant to your probable cause determination?

21 A. Not that I recall.

22 Q. And is it accurate to say that when you met with
23 Lowery off --

24 A. To -- yes.

25 Q. You have some knowledge?

1 A. Your -- your previous question, can you repeat it?

2 Q. Yeah. Are there any other facts that you recall that
3 were relevant to your probable cause determination?

4 A. Yes. Seeing Mr. Harris, Sr., at 811 West New York
5 Avenue, associating with other known drug dealers.

6 Q. Okay. So -- and just following up on that question,
7 you saw that in surveillance footage?

8 A. The pole camera footage. Well, I don't recall if it
9 was pole camera footage or wood surveillance footage.

10 Q. But -- but you saw --

11 A. But it was from West New York Avenue.

12 Q. It was not from you physically being present for
13 that.

14 A. That's correct.

15 Q. Okay. And did you -- to your knowledge, did you
16 observe on surveillance or in person Mr. Harris, Sr.,
17 at any other drug locations?

18 A. I don't recall.

19 Q. Okay. So the facts -- all right. Do you recall any
20 other facts as you sit here today that led you to
21 find probable cause to arrest Mr. Harris, Sr., for
22 possession of narcotics?

23 A. No.

24 Q. When you, Perry, and Lowery met and discussed what
25 Officer Perry's interview with -- with Mr. Harris and

1 what you had found at the scene, did you-all together
2 make a decision to arrest and charge Mr. Harris, Sr.,
3 at that point?

4 A. Lowery, Perry, and I did not meet. Perry and I met.
5 Lowery was on West Indiana Avenue.

6 Q. Okay.

7 A. He was responsible for West Indiana Avenue as far as
8 making sure things were collected and whatnot.

9 Q. Okay.

10 A. Perry and I discussed, you know, everything that led
11 to Mr. Harris being arrested.

12 Q. Okay. And is it fair to say you made a decision at
13 that point to arrest Mr. Harris, Sr.?

14 A. We made a decision to arrest him before clearing the
15 search warrant at his -- his residence.

16 Q. Okay. But at the time you made the decision, you
17 knew of all the facts that you just relayed to me.

18 A. After drugs were found in the car registered to him
19 that he had knowledge of the way the car worked and
20 took me personally to the keys that he said belonged
21 to the car, yes.

22 Q. And you tested the keys on the car.

23 A. Yes.

24 Q. Okay. So is it fair to say that the decision was
25 made by you and Perry together?

1 A. Probably.

2 Q. What does "probably" mean?

3 A. Frequently on a situation -- a search warrant, if you
4 will, the detective that obtained the search warrant
5 -- the case officer, if you will -- they may consult
6 with "This is what I've got and this is where I want
7 to go." And the best of my knowledge, that's what
8 happened at Mr. Harris's home; that we discussed what
9 we knew, what was found, and what we knew, and then,
10 you know, I don't know if he reached a decision and I
11 agreed to it or -- I -- I don't recall how that
12 transpired.

13 Q. But you did not disagree with the decision.

14 A. Not at all.

15 Q. You did not attempt to stop the arrest.

16 A. No.

17 Q. Or avoid the arrest.

18 A. No.

19 Q. And just so I'm clear, what is the information that
20 Officer Lowery relayed to you?

21 A. What was found on West Indiana Avenue. I believe we
22 had him -- we -- I had him or Perry had him question
23 Junior to drugs found at Senior's house.

24 Q. Okay. And did he relay to you a response of what
25 Junior said?

1 A. I -- I don't recall.

2 Q. So -- so as you sit here today, you're not saying
3 that that was part of your probable cause
4 determination.

5 A. I'm saying it could have been.

6 Q. It could have been? But you don't recall what was
7 said.

8 A. Not right off the top of my head, no.

9 Q. Okay. I mean --

10 A. In all honesty, I don't think we needed it, but -- I
11 don't recall.

12 Q. All right. I'm going to show you what's marked as
13 Exhibit L. This has already been marked in the last
14 deposition. This is the magistrate's order.

15 (Plaintiff's Exhibit L was identified.)

16 (Discussion off record with court reporter
17 regarding exhibits.)

18 A. The last one had an extra page that was blank.

19 Q. You can -- don't worry about that. This is the
20 magistrate's order from Lee Harris, Sr., right?

21 A. Yes, sir.

22 Q. And the magistrate judge who signed this order was
23 Carol Wright.

24 A. Yes, sir.

25 Q. And it was issued on February 20th, 2018.

1 A. Yes, sir.

2 Q. And Officer Lowery is listed as the arresting
3 officer --

4 A. Yes, sir.

5 Q. -- which -- and in this order Magistrate Wright
6 determines -- and I'll -- I'll just read from the
7 first line:

8 "The defendant named above has been arrested
9 without a warrant, and the defendant's
10 detention is justified because there is
11 probable cause to believe that on or about the
12 date of offense shown and in the county named
13 above, the defendant named above unlawfully,
14 willfully, and feloniously did possess 28
15 grams or more."

16 And so Magistrate Judge Wright determined
17 there was probable cause to arrest Mr. Harris.

18 A. Yes.

19 Q. And she did that, I believe, for four different
20 offenses: possession of cocaine, possession of 28
21 grams or more. Is that correct?

22 A. I see four charges.

23 Q. You see four charges, okay. And are they possession?

24 A. No.

25 Q. Is possession of 28 grams or more?

1 A. That is trafficking cocaine.

2 Q. Trafficking. Okay. Possession of drug
3 paraphernalia?

4 A. Yes.

5 Q. Using a vehicle to store narcotics?

6 A. Maintaining a vehicle/dwelling place.

7 Q. And possession with intent to self or distribute.

8 A. Correct.

9 Q. Okay. And Officer -- Lee Harris, Sr., was taken from
10 his -- his house to the magistrate's office.

11 A. Yes, sir.

12 Q. So Officer Lowery must have come to the scene, to
13 803, to pick up Lee Harris, Sr.

14 A. Not necessarily.

15 Q. Someone could have transported him to Lowery and then
16 Lowery transported him to the magistrate?

17 A. I don't recall the order that that was done. Could
18 have been transported to the police department.

19 Q. But this indicates to you that Lowery did transport
20 him to the magistrate.

21 A. It indicates to me that Lowery is the one who swore
22 to the magistrate's orders, not necessarily the
23 person who served him or transported anyone.

24 Q. Did you talk to Lowery prior to him swearing to the
25 magistrate?

1 A. Very likely.

2 Q. Do you recall doing that in person?

3 A. No.

4 Q. Do you recall doing that over the phone?

5 A. I -- I -- I don't recall it.

6 Q. Well, you just told me that you had a phone
7 conversation with Officer Lowery.

8 A. We did.

9 Q. Okay. And so on that phone conversation, do you
10 recall telling Officer Lowery what you had learned at
11 803 at Mr. Harris, Sr.'s, residence?

12 A. I don't remember telling him as much as asking him
13 what he had found. I don't recall.

14 Q. Do you know if Officer Perry had a conversation with
15 Officer Lowery where he informed him of this
16 information that led to Magistrate Wright's probable
17 cause -- or magistrate's order?

18 A. It's very possible.

19 Q. But as you sit here today, you do not recall an
20 in-person conversation with Officer Lowery.

21 A. I don't recall.

22 Q. Okay. Did you have any communication with Magistrate
23 Wright?

24 A. No. Not that I remember.

25 MR. RUBERT-SCHEWEL: Do you have the

1 prosecution summary?

2 MR. DAVIS: Yeah.

3 MR. RUBERT-SCHEWEL: Can you show it to him?

4 We'll just go off the record for one
5 second.

6 COURT REPORTER: Sure.

7 (Recess from 1:10 p.m. to 1:12 p.m.)

8 BY MR. RUBERT-SCHEWEL:

9 Q. Do you recall when the prosecution summary was
10 provided to the District Attorney's Office?

11 A. I do not.

12 Q. Would it have been sometime after the arrest of Lee
13 Harris, Sr.?

14 A. It would have been after the arrest, but I have no
15 clue when it was actually sent.

16 Q. And is the prosecution's summary, is it -- is it also
17 provided on a physical document as well as on
18 NCAWARE?

19 A. To the state District Attorney's Office?

20 Q. Yeah.

21 A. It would depend. I mean, if the file was too large,
22 it would be provided in person. This particular
23 incident, I don't -- I don't know.

24 Q. Does the prosecution summary ever include handwritten
25 documents?

1 A. Yes.

2 (Brief pause.)

3 Q. Did you review the prosecution summary before it was
4 submitted?

5 A. No.

6 Q. Did you meet with the District Attorney related to
7 Lee Harris, Sr.'s, prosecution?

8 A. I don't recall.

9 Q. Is it your typical practice to meet with the District
10 Attorney related to investigations that you are
11 supervising?

12 A. No. Does it happen from time to time, yes; but on a
13 regular basis, no.

14 Q. Are you aware that Lee Harris, Sr., was indicted by
15 the state?

16 A. Yes.

17 Q. And an officer in the Southern Pines Police
18 Department testified against him in the grand jury?

19 A. Yes.

20 Q. Was that Officer Perry?

21 A. I don't recall.

22 Q. Do you recall if it was Officer Lowery?

23 A. I don't recall who it was.

24 Q. Okay. I'm going to show you what is marked as
25 Exhibit R. This is the incident investigation

1 report.

2 (Plaintiff's Exhibit R was identified.)

3 MR. RUBERT-SCHEWEL: Glenn, I think I have one
4 more copy.

5 MR. JONES: Thank you.

6 BY MR. RUBERT-SCHEWEL:

7 Q. Do you recognize this document?

8 A. Yes, sir.

9 Q. Have you seen it previously?

10 A. Yes, sir.

11 Q. And I'm just going to ask you some of the items on
12 the top, the identifying information. On the top it
13 says "Southern Pines Police Department." It says "At
14 Found 2/20/2018," right? Month, day, year?

15 A. (Nodded head affirmatively.)

16 Q. Is that a yes?

17 A. Yes.

18 Q. And it says "Location of Incident, 803 North Sycamore
19 Street" --

20 A. Yes.

21 Q. -- "Aberdeen, North Carolina 28315."

22 A. Correct.

23 Q. And it also says that it was reported on February
24 20th, 2018, at 15:42.

25 A. Correct.

1 Q. And further down where it says "Others Involved," it
2 says "RP - Perry, Jason."

3 A. Yes.

4 Q. What does RP stand for?

5 A. Reporting party or reporting person.

6 Q. Why would Jason Perry have been the reporting person
7 or why was he the reporting person?

8 A. 'Cause he was the one who completed that
9 investigation report for that search warrant.

10 Q. Okay.

11 A. Furthermore, somebody has to be. There has to be a
12 reporting person or today NIBRS, then UCR would throw
13 an error code.

14 Q. And as we discussed previously, typically the person
15 who completed the incident or investigation report is
16 the case officer assigned to that investigation.

17 A. A lot of times, yes.

18 Q. Okay. If you'd turn to the second page, you'll see a
19 narrative section. And if you'd turn -- well, this
20 narrative section, it starts with "MO." And, sorry,
21 three lines down it says, "I, Detective Perry." Do
22 you see that?

23 A. I do.

24 Q. Now, if you flip through this, on page 3, page 4,
25 page 5, there are a number of different supplemental

1 reports provided by other officers. Do you see that?

2 A. I do.

3 Q. Do you have a supplemental report in front of you? I
4 think it was Exhibit T that I showed you.

5 MR. RUBERT-SCHEWEL: Can you just show it to
6 him real quick?

7 BY MR. RUBERT-SCHEWEL:

8 Q. The supplemental report that's plugged into the
9 computer, will that be identical to what is provided
10 in the narrative section?

11 A. So -- yes. This one is old system (holding up a
12 document). This is what it looks like printed on new
13 system (holding up a document). So going back to
14 page 2 --

15 Q. So basically what you're saying is that --

16 A. Well --

17 Q. -- Exhibit T, which is the Price supplemental report
18 was the old system.

19 A. That's the way it looked when it printed on the old
20 system.

21 Q. Exhibit R is the -- is the -- how it looks on the new
22 system.

23 A. Yes, sir.

24 Q. Okay. And so the old system, if I'm correct, had a
25 number of different attachments to the main incident

1 report?

2 A. What do you mean "attachments"?

3 Q. Well, in the new system on, you know, Exhibit R,
4 they're -- all the supplemental reports are together
5 as part of one document, right?

6 A. Yes, sir.

7 Q. And it looks like in the old system they were
8 individualized reports.

9 A. Yes.

10 Q. Okay. So I'm going to show you the supplement that
11 you wrote, and yours is on page 6 of 9. Please let
12 me know when you're there.

13 A. I'm there.

14 Q. And it says Supplement Number 4, Kyle Alan Marsh,
15 February 26, 2018. Now, before we -- we talk about
16 this, I mean, you start out by saying:

17 "I assisted with the execution on the search
18 warrant. Upon my arrival at the location,
19 members of SPPD SRT had taken Mr. Lee Harris,
20 Sr., into custody."

21 Where were you prior to your arrival?

22 A. I think I drove from Southern Pines Police Department
23 to there.

24 Q. And you arrived after the SRT team?

25 A. They would have been the first to arrive. I don't --

- 1 I don't know how far after them I was.
- 2 Q. Okay. But you were after them.
- 3 A. Yes.
- 4 Q. Okay. And did you-all go in a caravan? You know,
- 5 were you driving behind them?
- 6 A. I don't remember.
- 7 Q. Okay. And -- and is there a way that that is
- 8 typically done or procedurally supposed to be done?
- 9 A. Procedurally supposed to be done? Not necessarily.
- 10 Q. Okay.
- 11 A. Depends on the mission and what the mission requires.
- 12 Q. So sometimes you may send SRT out ahead of you-all
- 13 and you're fine showing up later.
- 14 A. Yes.
- 15 Q. Okay. Now, but the point is that by the time you got
- 16 there, Mr. Harris was already in custody.
- 17 A. He was detained, yes.
- 18 Q. And just to be clear, you drove there in your squad
- 19 car.
- 20 A. I don't know if I drove or rode with someone else.
- 21 Q. Okay. Were you at 1090 West Indiana previously?
- 22 A. I don't remember going there.
- 23 Q. At all that day.
- 24 A. No. Not that I remember.
- 25 Q. Okay. When you arrived, where did you park?

- 1 A. I don't remember.
- 2 Q. Do you recall what other officers were present there?
- 3 A. Not entirely, no.
- 4 Q. Was Officer Perry present?
- 5 A. Officer Perry was present.
- 6 Q. Was Officer Lowery present?
- 7 A. No, I don't believe so, on Sycamore. I could be
- 8 wrong.
- 9 Q. Was Officer Edwards present?
- 10 A. I don't remember.
- 11 Q. How about Officer or Civilian Price?
- 12 A. When I arrived, I don't believe so, but she was
- 13 present at some point.
- 14 Q. How about Chief Temme?
- 15 A. I don't remember Chief Temme coming. I don't -- I
- 16 don't remember.
- 17 Q. You don't -- you don't -- to your recollection he was
- 18 never there.
- 19 A. I don't remember.
- 20 Q. You don't remember if he was or if he was not.
- 21 A. That's correct.
- 22 Q. Do you -- and -- and so I guess you don't recall ever
- 23 speaking to Chief Temme.
- 24 A. No, sir.
- 25 Q. Were officers from other jurisdictions present?

1 A. Yes.

2 Q. What -- what jurisdictions?

3 A. Aberdeen, for sure.

4 Q. Was Carl Colosco [verbatim] present?

5 A. Yes.

6 Q. Is that his name?

7 A. Close enough.

8 Q. Colasacco?

9 A. There you go. We're getting there. He is the
10 current Chief of Police. At the time he was the
11 Deputy Chief of Police.

12 Q. Did you contact Aberdeen and request to be able to
13 execute this search warrant at this location on this
14 date?

15 A. No. I originally requested that they execute the
16 search warrant.

17 Q. And what happened?

18 A. Carl, Chief Colasacco, was very familiar with the
19 case. He was the point of contact in getting mutual
20 aid set up previously. Chief Wenzel, I think, was
21 the -- was the chief at the time who signed the
22 mutual aids, but Carl was instrumental in that and
23 providing us with detectives to conduct surveillance
24 on Sycamore.

25 But I -- Carl was informed that we would be

1 executing search warrants on these locations and was
2 requested that they execute the one in Aberdeen, and
3 his request was, "Y'all have been, you know, working
4 this case the whole time. We'll go with you and
5 y'all can do it."

6 Q. Okay. So it wasn't that he thought it was not
7 justified.

8 A. Not at all.

9 Q. He thought it was justified.

10 A. Yes.

11 Q. That's your recollection.

12 A. Yes.

13 Q. Did he actually tell you that?

14 A. We -- Carl and I talked about the case a few times.
15 I mean, he knew pretty much every step of the --
16 well, I'm not going to say every step of the case,
17 but he helped in putting the camera on the storage
18 unit by Bernie's Hardware. You know, Carl was -- was
19 very helpful in providing people, other detectives
20 from Aberdeen to assist with surveillance on
21 Sycamore.

22 Q. Did he say anything about Lee Harris, Sr.?

23 A. I don't remember. I don't remember if --

24 Q. Did he ever tell you that he did not believe Lee
25 Harris, Sr., was involved --

1 A. No.

2 Q. -- in selling narcotics?

3 A. No.

4 Q. He never told you that?

5 A. Not that I recall.

6 Q. So his -- his sole basis for saying "I don't want to
7 serve this warrant" was that you-all had been in
8 charge of the investigation and running the
9 investigation?

10 A. He didn't say he didn't want to serve the warrant.
11 He said something to the effect of, you know, "It's
12 y'all's case." Like, "We don't want to mess anything
13 up. We'll help you however you need it. Y'all can
14 do it."

15 Q. Okay. So when you first arrived, you said Mr. Harris
16 was in custody. Where did you first interact or see
17 Mr. Harris?

18 A. I don't remember the exact location. My supplement
19 states that "as I entered the home," so he must have
20 been inside, just inside the home.

21 Q. And was he handcuffed at that point?

22 A. I believe so.

23 Q. And was he sitting or standing?

24 A. I don't recall.

25 Q. Well, you state that he was cursing at officers.

1 A. Yes.

2 Q. What exactly did Mr. Harris say?

3 A. My report indicated that he said he didn't sell drugs
4 and that he was cursing at officers. I don't
5 remember all of his exact statements.

6 Q. But you -- so you don't recall the curse words that
7 he said.

8 A. I do not.

9 Q. Okay. Do you recall how many curse words he stated?

10 A. I do not.

11 Q. At this point in your supplement you -- you state
12 that you told Mr. Harris to calm down and you
13 informed him that Detective Perry would be explaining
14 the situation to him in detail. Is that when Harris
15 was interviewed by Officer Perry in his car?

16 A. Shortly thereafter, yes, sir.

17 Q. And at that point you continued to search the
18 residence.

19 A. I believe we had Tori take photographs first.
20 Typical practice would have been to have a K9 also to
21 conduct a sniff before we start disturbing things.
22 And I do -- I do remember Officer Dean being there
23 with his K9.

24 Q. Okay.

25 (Brief pause.)

- 1 Q. And at some point the K9 alerted to the Cadillac
2 parked on the property.
- 3 A. I believe so.
- 4 Q. Were you present for that?
- 5 A. I don't remember if I was told that the dog alerted
6 or if I actually observed it. I don't -- I don't
7 recall.
- 8 Q. And after the K9 alerted, you called in the license
9 plate number on the Cadillac to Communications.
- 10 A. I believe so.
- 11 Q. Do you recall who you spoke with at Communications?
- 12 A. I believe I called it in over the radio, but I -- I
13 don't -- I don't recall who was working that night
14 or --
- 15 Q. Okay.
- 16 A. -- or if I did it by phone. I don't -- I don't
17 recall.
- 18 Q. And you did it to determine who the plate was
19 registered to.
- 20 A. That would have been one reason, yes.
- 21 Q. What was the other reason?
- 22 A. So we could enter -- whoever it comes back to could
23 be entered into CAD for the call.
- 24 Q. I see.
- 25 A. So there could be a record of it.

- 1 Q. Okay. Why -- why would it be significant to know who
2 the plate was registered to?
- 3 A. Well, it's the vehicle we're searching, so we want to
4 document, you know, that this is the vehicle, not
5 just a Cadillac, but this specific Cadillac.
- 6 Q. Uh-huh.
- 7 A. I mean, that would -- that would be the main reason
8 for documentation purposes.
- 9 Q. Well, earlier you stated that it was significant to
10 your probable cause finding.
- 11 A. It is.
- 12 Q. Why?
- 13 A. Because it -- it goes to show ownership, that you own
14 the -- you own the car. It's on your property.
15 You're responsible for the contents therein.
- 16 Q. Okay. And Communications, when you contacted them,
17 they searched a database to come up with this
18 information, right?
- 19 A. Yes, sir.
- 20 Q. And they reported to you that the car was registered
21 to Lee Harris, Sr.
- 22 A. Yes, sir.
- 23 Q. Did they say that it was an active registration?
- 24 A. I don't recall, but I believe the registration was
25 expired.

- 1 Q. And they told you that.
- 2 A. It's like- -- all likeliness they did. I don't
3 recall specifically them telling me that.
- 4 Q. Okay.
- 5 A. I may have documented it, but -- (no further
6 response).
- 7 Q. And --
- 8 A. (Witness reviews documents.) I didn't indicate
9 whether it was an active registration or not.
- 10 Q. What -- what line are you looking at?
- 11 A. I was just looking -- let's see. Page 7.
- 12 Q. Uh-huh.
- 13 A. The sixth line where it says, "I called in the
14 registration plate to Communications."
- 15 Q. Okay.
- 16 A. "And the vehicle returned being registered to
17 Mr. Harris."
- 18 Q. So you didn't think it was significant that the
19 registration was inactive?
- 20 A. No, not at all.
- 21 Q. Even though it was years old?
- 22 A. No.
- 23 Q. Why?
- 24 A. It's still registered to you. It doesn't have to be
25 a moving, operable vehicle. The fact that the

1 vehicle's operable or inoperable didn't really have a
2 bearing on anything at the time.

3 Q. Well, part of what you're looking to establish is
4 ownership, right?

5 A. Sure.

6 Q. For possession of whatever's -- of what's found
7 inside the vehicle, right? Possession of the drugs?

8 A. Yes.

9 Q. Abut -- but you're also looking to establish primacy
10 and recency, right?

11 A. Hmm. Give me the definition of that.

12 Q. So in -- in that, you know, someone had an
13 opportunity, a recent opportunity to actually enter
14 that vehicle, go into that vehicle, or place drugs in
15 that vehicle.

16 A. Sure.

17 Q. That's important.

18 A. Sure.

19 Q. Right? So an active registration would show that
20 someone is actually going into that vehicle on a
21 recent -- or, you know, primacy and recency. It
22 would show that someone has gone into that vehicle
23 recently.

24 A. I disagree.

25 Q. Why?

1 A. If the vehicle -- if the Cadillac in question had
2 been in a swamp in Robeson County and at the bottom
3 of that swamp, then it's a different story. It --
4 you know, the fact that the vehicle was on
5 Mr. Harris's property outside his bedroom, that end
6 of the home, and it is his vehicle, you know, the
7 registration being valid or -- or invalid doesn't --
8 doesn't mean the door is shut just because the
9 registration is invalid. Where the vehicle is, you
10 know, I think can -- can be a factor as well.

11 Q. Do you know that the registration had expired in
12 2015?

13 A. I -- I feel confident that the registration was
14 expired. Well, I know the registration was expired
15 based upon a conversation that happened later, but
16 that would not have -- a valid registration, a -- you
17 know, an expired registration, a revoked registration
18 would not have had any bearing whatsoever.

19 Q. Well, let me -- did you know -- do you recall who the
20 chief Superior Court judge was in this case?

21 A. When you say "in this case" --

22 Q. Who was responsible for this case, who -- whose --
23 who had this case on their docket, who did the bond
24 hearings?

25 A. No. That could be multiple people. So a Superior

1 Court Judge signed the search warrants. I know that
2 was Judge Webb.

3 Q. Yeah. Okay.

4 A. I believe he was a Superior Court Judge for other
5 proceedings in it, but I'm -- I'm not certain of
6 that.

7 MR. RUBERT-SCHEWEL: Just give me one second.

8 (Brief pause.)

9 BY MR. RUBERT-SCHEWEL:

10 Q. Okay. I'm going to show you what is marked as
11 Exhibit N.

12 MR. RUBERT-SCHEWEL: And I apologize, Glenn.
13 I only have one copy. That's the one I'm
14 planning on showing him.

15 BY MR. RUBERT-SCHEWEL:

16 Q. This is a court transcript of the modification of
17 bond hearings. It's from May 1st, 2018. It says
18 "Honorable James Webb Presiding," and this was shown
19 at Judge McSweeney's deposition too.

20 (Plaintiff's Exhibit N was identified.)

21 Q. I'm just going to ask you to read to yourself from
22 page 31 -- let's start at the top, line 1, to page
23 32, line 10. And then when you're done with that,
24 please just hand it back.

25 MR. JONES: Do you mind if I take a look

1 first?

2 MR. RUBERT-SCHEWEL: Yeah, yeah, please.

3 MR. JONES: And you said 31, line --

4 MR. RUBERT-SCHEWEL: Just at the top of 31
5 to --

6 MR. JONES: So 31 to 32.

7 MR. RUBERT-SCHEWEL: -- to just the middle of
8 32 --

9 MR. JONES: Okay.

10 MR. RUBERT-SCHEWEL: -- or so, yeah.

11 (Brief pause.)

12 A. All right. So tell me again, sir?

13 BY MR. RUBERT-SCHEWEL:

14 Q. Just the top of 31 to the middle of 32 to -- I think
15 it's line 10 on 32.

16 A. On 31, "The Court."

17 Q. Yeah. And you don't have to read it out loud.

18 MR. JONES: To yourself.

19 BY MR. RUBERT-SCHEWEL:

20 Q. Just to yourself, and then I will --

21 A. No, you're good. No, you're good.

22 Q. -- and then let me know when you're done and hand it
23 back to me, please.

24 A. Roger that. (Witness reviews document.)

25 A. Where do you want me to stop?

1 Q. Line 10.

2 A. Line 10. (Witness reviews document.) Okay.

3 Q. So at this bond hearing, it's accurate to say that
4 Judge Webb is questioning Officer Perry.

5 A. Yes.

6 Q. And he's asking Officer Perry about the vehicle.

7 A. Yes.

8 Q. And he's asking Officer vehicle -- Officer Perry
9 facts about the vehicle that would show proof that
10 were -- or lend proof to the fact that the vehicle
11 was, in fact, in the custody and control and
12 ownership of Lee Harris, Sr.

13 A. I don't know his reasons for asking Perry those
14 questions.

15 Q. Okay. Well, he is asking -- I mean, did it seem to
16 you like that those -- those were what those
17 questions were seeking?

18 A. Yes.

19 Q. And --

20 MR. JONES: Just -- you're -- you're asking
21 him his opinion of Judge Webb's opinion?

22 BY MR. RUBERT-SCHEWEL:

23 Q. Did the facts that he was eliciting was -- tend to
24 show that this was in the control of Lee Harris, Sr.?

25 A. That conclusion could be drawn.

1 Q. And one of the -- so some of the questions he asked
2 was, "Was the vehicle operative?"

3 A. Yes.

4 Q. "Was the vehicle registered?"

5 A. Hold on. Were you just asking me that, for me to
6 answer --

7 Q. I'm asking you if he --

8 A. -- that question?

9 Q. No.

10 A. Okay.

11 Q. I'm asking you if he -- if he asked that question.

12 A. That's what I just read.

13 Q. Did he -- and he asked, "Was the vehicle registered?"

14 A. Correct.

15 Q. He also asked, "Do you know who all" -- and I'm
16 summarizing -- "had access to the vehicle?"

17 A. Yes.

18 Q. And the access question is important because you want
19 to have to -- you want to be able to consider if
20 someone else could have placed the drugs in the car.

21 MR. JONES: And, again, object to form.

22 You're saying "you." Are you saying "you"
23 as in Judge Webb?

24 MR. RUBERT-SCHEWEL: No, I'm saying "you" as
25 in you, Officer Marsh, sitting here today.

1 BY MR. RUBERT-SCHEWEL:

2 Q. The question of access to the vehicle, the Cadillac,
3 is an important question because you want to know if
4 someone else put the drugs in the car.

5 A. Could it be important? Is that what you're asking
6 me?

7 Q. Is it important?

8 A. Well, yes.

9 Q. Is -- is access to the vehicle an important
10 question --

11 A. Yes.

12 Q. -- for probable cause in this case?

13 A. Yes.

14 Q. And one of the other questions that Judge Webb asked
15 was whether or not it had a valid registration on it.

16 A. Yes.

17 Q. And Officer Perry said yes.

18 A. Yes.

19 Q. And so you're saying that was not true.

20 A. What was not true?

21 Q. The car --

22 A. That he said that?

23 Q. -- the car did not have a valid registration.

24 A. Valid registration. So was it active, meaning you
25 could legally drive it on the road? Then, no, it was

1 -- it was either revoked or would be that.

2 Is it a valid registration meaning is it a
3 legitimate registration plate that belongs to that
4 vehicle, yes. I mean, valid as the VIN number
5 matches, you know, that -- then yes.

6 Q. Is it your opinion than when the Court asked, "Even
7 though you say the vehicle was not operable because
8 at least it didn't have the battery in it, it still
9 had a valid registration on it," you -- you -- you
10 think that question about the valid registration is
11 whether or not it was valid from 2015?

12 A. I think that if the question is valid versus revoked
13 registration is the question, I think by the response
14 of, "Well, the car didn't run. It didn't have a
15 battery in it" kind of satisfies what you're getting
16 at as far as --

17 Q. Well, let -- let me ask -- let me ask you this, a
18 different way. I mean, clearly, Judge Webb thought
19 it was a significant point, right? He asked Jason
20 Perry that question --

21 A. Yes.

22 Q. -- whether or not --

23 MR. JONES: Object to form.

24 BY MR. RUBERT-SCHEWEL:

25 Q. -- there was a valid registration.

1 MR. JONES: You can answer.

2 A. Can you repeat the question?

3 BY MR. RUBERT-SCHEWEL:

4 Q. He asked Jason Perry whether or not the car had a
5 valid registration.

6 A. According to that, yes.

7 Q. And earlier today, you told me that you did not think
8 it was significant of whether the registration was
9 valid or not.

10 A. It's not significant.

11 Q. So then why was he asked that at a bond hearing?

12 A. If I remember it --

13 MR. JONES: Object to form.

14 THE WITNESS: Okay.

15 MR. JONES: Go ahead. You can answer.

16 A. I remember exactly why it was -- it was asked. And
17 the reason I remember why is I received a call from
18 Perry right after this hearing.

19 And Judge McSweeney was the Assistant DA at
20 the time. And in probable cause hearings, a DWI
21 plea, if you will, those types of proceedings, the
22 District Attorney will summarize the facts of a case.
23 And sometimes they get those facts wrong, and he did
24 in this case, "he" being McSweeney.

25 And McSweeney, in giving his summary -- and --

1 and this is, again, based upon a phone call that I
2 had with -- with Perry after this hearing that
3 started out with "You're not going to believe what
4 Warren did."

5 So Judge Webb, and rightfully so, would have
6 needed to ask additional questions. And -- and I
7 think that's probably why Warren asked for Perry to
8 go on the stand to give the summary because I think
9 he realized he was screwing it up.

10 Q. So you think the question about the valid
11 registration, to you, that has nothing to do with
12 probable cause --

13 A. Not at all.

14 Q. -- or ownership or -- or --

15 A. That's two --

16 Q. Well, sorry. Let me -- let me withdraw that. It has
17 nothing to do with access or opportunity for probable
18 cause, whether or not the registration was valid or
19 not.

20 A. Those are three different things.

21 Q. Okay. How about access?

22 A. Valid registration, no.

23 Q. What about opportunity?

24 A. No.

25 Q. What -- what if the registration had been 20 years

1 old?

2 A. No bearing.

3 Q. Let's say if -- so -- so take -- take a car, a
4 brand-new car, sit it in your parking lot, a truck in
5 the driveway, and then a Cadillac with an expired
6 registration with a cover on it sitting in your
7 backyard. Do you think it's fair to say that the
8 owner of those two vehicles is just as likely to
9 enter those two vehicles or have the same amount of
10 access to those two vehicles?

11 A. That was very long. But can -- can you go through
12 that scenario?

13 Q. Yes, sir. You're -- you're -- you've been sitting
14 here telling me that registration does not matter --

15 A. I'm not --

16 Q. -- that it has no bearing on your probable cause
17 determination.

18 A. I'm not saying it can't have any bearing. In this
19 case it has no bearing.

20 Q. Well, you told me -- okay. So why does it have no
21 bearing in this case?

22 A. Because it is a car registered to Mr. Harris that was
23 on his property, and furthermore, you know, the
24 probable cause came from a totality of everything and
25 he had, according to what Perry had told me and

1 according to what, you know, I later learned
2 listening to the audio conversation between
3 Mr. Harris and Detective Perry, he knew everything
4 about the car to include a door would be unlocked.
5 The trunk, he thought, was broken.

6 It's his car and he knows all of these things
7 about this car. The car is at his house. And
8 according to the warrant, over two ounces of cocaine
9 were found in his car.

10 Q. Is the fact that a car is in someone's backyard,
11 covered, and not registered -- let's start with a
12 cover. Is that indicative to you that they may not
13 be going in it every single day?

14 A. Could it? Yes.

15 Q. Okay. And the fact that it doesn't have a battery,
16 could it be indicative of that?

17 A. Of?

18 Q. The fact that they may not be going in it every day?

19 A. Let me clarify "going in it." What does that mean?

20 Q. Entering the car.

21 A. Entering the car?

22 Q. Yeah.

23 A. No.

24 Q. No. Okay. How about the fact that it's not
25 registered?

1 A. You're ask -- ask -- ask me what -- what you --

2 Q. I'm -- I'm asking --

3 A. -- your question.

4 Q. -- you these questions to see if you think these are
5 indicative or suggest that someone may not be going
6 inside the vehicle.

7 A. To me, no.

8 Q. No?

9 A. No.

10 Q. You don't think it has any bearing on their access to
11 the vehicle or them going in the vehicle that it's --
12 has a cover on it.

13 A. No.

14 Q. Why?

15 A. Going in the vehicle to the store, yes. It has
16 everything. You know, no battery. Car doesn't run.
17 They're not going to go somewhere in it. But, you
18 know, a car on your property, just because it has a
19 cover on it, doesn't keep you from accessing it
20 anytime you want to.

21 Q. Did -- did you have any -- I'm not -- did you have
22 any surveillance or did you know of any surveillance
23 at the time that you made this decision with Officer
24 Perry to arrest Lee Harris, Sr.? Did you have any
25 surveillance showing Lee Harris, Sr., going into the

1 Cadillac?

2 A. I don't know.

3 Q. Well, I'm asking what you knew.

4 A. I -- I'm not aware of any.

5 Q. Okay. Were you aware of surveillance that occurred
6 approximately three weeks prior showing Lee Harris,
7 Jr., going under the cover of the Cadillac and
8 placing something inside the Cadillac?

9 A. No.

10 Q. You weren't aware of that.

11 A. I do recall a document where -- or something -- notes
12 or something. I believe it was Lowery and an
13 Aberdeen detective and something about a tarp, but,
14 no, I -- I don't remember the Cadillac specific. It
15 could be there and I --

16 Q. And so you don't --

17 A. -- just don't remember it.

18 Q. -- recall that three weeks prior to execution of the
19 search warrant and the arrest of Mr. Harris, you
20 don't recall that officers in your police department
21 observed Lee Harris, Jr., place an object -- go under
22 the tarp and place an object in the Cadillac.

23 A. I don't remember it being the Cadillac, but it very
24 well could have been. Well, I'm not saying it didn't
25 happen. I'm saying I don't recall it.

1 Q. And -- and so now sitting here and knowing that
2 today, that your officers observed his son go put
3 something in the Cadillac, does that change your
4 opinion at all to probable cause?

5 A. No.

6 Q. Why?

7 A. Because I fully believe that the drugs that were
8 found in that Cadillac belonged to Harris Senior.

9 Q. Even though you saw -- even though your officers in
10 your department saw Harris Junior place an object in
11 that car.

12 A. Well, during the surveillance, we observed Junior
13 placing objects in various spots --

14 Q. And you knew Junior --

15 A. -- going back --

16 Q. -- was a known drug dealer.

17 A. Yes.

18 Q. You observed Junior yourself make drug transactions.

19 A. Yes.

20 Q. Did you ever --

21 A. Well, observe -- observe myself through video, watch
22 video.

23 Q. Through video.

24 A. Yes. Yes. And --

25 Q. So -- so why does that not change your opinion as to

1 whose the drugs were?

2 A. Based upon what Mr. Harris said the day he was
3 arrested, the intimate knowledge that he had of the
4 Cadillac, of the doors that would be unlocked, the
5 doors that wouldn't work.

6 Q. So based on the fact that he knew about the Cadillac.

7 MR. JONES: Object to form.

8 THE WITNESS: Can I answer?

9 MR. JONES: You can answer.

10 THE WITNESS: Okay.

11 A. Yeah. I -- I had -- yes. It led me to believe that
12 he would go into that Cadillac. Yes.

13 BY MR. RUBERT-SCHEWEL:

14 Q. And it led you to believe essentially that he had
15 gone into that Cadillac within the three weeks prior
16 and knew about the drugs, who knew they were there.

17 A. "He" being --

18 Q. Mr. Harris, Sr.

19 A. -- Mr. Harris, Sr.?

20 Q. Yeah.

21 A. Yeah.

22 Q. Well, let me -- let me ask you this. Did you think
23 that Lee Harris, Sr., put the drugs there?

24 A. I don't know. I don't know who put them there.

25 Q. So it was just of no consequence to you that Lee

1 Harris, Jr., had been observed -- or it's no -- I
2 mean, you're saying at the time you didn't know this,
3 but now today you're saying it's no consequence that
4 he was observed doing that.

5 And -- and let me -- let me strike that,
6 actually, and back up.

7 There was a -- a target in this investigation.
8 There was a Hispanic target, and I'm sorry that I
9 forget his name, who was a supplier.

10 A. Uh-huh.

11 Q. And --

12 A. Yes. Sorry.

13 Q. -- he -- he had a mark that he -- he put on his
14 drugs. Do you recall that?

15 A. I don't.

16 Q. Okay.

17 A. I do recall a supplier.

18 Q. Yeah.

19 A. But a mark? I don't recall.

20 Q. Do you -- okay. We'll come back to that.

21 (Brief pause.)

22 Q. Okay. I'm going to show you Exhibit X. And you can
23 move those out of your way, if you want. This is an
24 event report?

25 (Plaintiff's Exhibit X was identified.)

- 1 A. Yes.
- 2 Q. And just -- just so I'm clear, it says "Prime Unit
3 887; Perry, Jason Sinclair"? Do you see that at the
4 top? At the very top.
- 5 A. Yes.
- 6 Q. And does that indicate to you that Officer Perry made
7 the original call?
- 8 A. It's very likely.
- 9 Q. And it says, "Location: 803 North Sycamore"?
- 10 A. Yes.
- 11 Q. And call taker says "A. Grigg"?
- 12 A. Correct.
- 13 Q. What does that mean?
- 14 A. That's Amanda Grigg, dispatcher.
- 15 Q. And under "Times," it has "Call received, call
16 routed, call take finished," and it says the first
17 call, I believe, was received at 16:25:27.
- 18 A. Yes.
- 19 Q. And then if you go down further, it also says --
20 there's a section that says "Radio log."
- 21 A. Yes.
- 22 Q. How are these two sections different, times and radio
23 log?
- 24 A. I can't give you an educated answer on why they're
25 different.

1 Q. Okay.

2 A. The radio log is when a unit checks en route --
3 dispatched, en route, on scene, and clear. But it's
4 not stamped by them picking up the radio and saying,
5 "I'm clear." It's whenever the dispatcher enters a
6 code to clear them. That's what the radio log is.
7 Yeah, other than that, I'm --

8 Q. Okay.

9 A. -- I can't answer.

10 Q. And I believe if we turn it over -- okay, yeah. No,
11 sorry. At -- at -- and the far left of radio log, it
12 says "Unit." And those are squad car units, right?

13 A. Those are badge numbers.

14 Q. Those are badge numbers?

15 A. Yes.

16 Q. Okay. What was your badge number?

17 A. 861.

18 Q. And I see you're down here on page 2 -- oh, sorry,
19 you're on page 1 also. So you were dispatched at
20 1627, out event at 1090 West Indiana.

21 A. I don't recall going there.

22 Q. But is that what that indicates to you, that you --
23 you went to West Indiana?

24 A. So at the very beginning, there would have been a
25 briefing that would have taken place.

1 Q. Okay.

2 A. After that briefing, someone -- could have been
3 myself, could have been Detective Perry, it could
4 have been Lieutenant Heaton -- would have informed
5 dispatch that we're going to these locations and gave
6 them the address. It could have been that she got
7 confused or whosoever was in dispatch about who went
8 to what. I -- I can't answer that.

9 Q. I mean, could it have also been that you went to West
10 Indiana?

11 A. It's possible.

12 Q. And, I mean, so this -- this out event, this isn't
13 where you're going on the radio and you're saying,
14 you know, "This is Officer Marsh. I'm headed to 1090
15 West Indiana."

16 A. No.

17 Q. That's not how it works.

18 A. That's not what that is, no.

19 Q. Okay. How is this information --

20 A. Completely was entered by the officer in their car or
21 the dispatcher in the Comm Center.

22 Q. Okay. So either you had to put this in your car or
23 she had to put it in as this is where you were
24 headed.

25 A. And it actually tells you. So when you're off to the

1 side under --

2 Q. Uh-huh.

3 A. -- "radio log" at far right, it says "A. Grigg."

4 Q. Okay.

5 W. It tells you who entered what.

6 Q. So she entered it.

7 A. Yes. If you go down on page 2 further, "K. Frick, C.

8 Kennedy" --

9 Q. Uh-huh.

10 A. -- these are different dispatchers --

11 Q. Uh-huh.

12 A. -- based upon the times after shift change.

13 Q. Uh-huh. And where it says "Comments" on page 2, all

14 of that is entered by A. Grigg.

15 A. Yes.

16 Q. But you're telling me that none of it is based off of

17 what she heard on radio traffic.

18 A. I'm not saying that. I'm not saying it's not what

19 she --

20 Q. But it could be.

21 A. -- heard. It's either going to be what she heard --

22 what she was told in person, what she was told over

23 the phone, or what she would have been told over the

24 radio.

25 Q. Okay. So you could have gotten over -- it would have

- 1 been possible for you to get over radio --
- 2 A. Yes.
- 3 Q. -- traffic and say, "I'm headed to 1090."
- 4 A. Yes.
- 5 Q. Okay.
- 6 A. It just wouldn't have my name beside "User." It
- 7 would have whoever changed me in the system.
- 8 Q. Got it. Okay. Now let's go to the third page, and
- 9 at the very bottom it says "Vehicle Detail Response."
- 10 Do you see that?
- 11 A. The very bottom.
- 12 Q. Well, yeah, the last --
- 13 A. Yes, yes, yes.
- 14 Q. And it says VIN number "1994 Cadillac."
- 15 A. Yes.
- 16 Q. And then it's -- further down it has a customer ID.
- 17 It says "Lee Marvin Harris, Sr."
- 18 A. Yeah.
- 19 Q. And it says "PLT Status: Expired."
- 20 A. Correct.
- 21 Q. What does that mean?
- 22 A. Plate status is expired.
- 23 Q. So the plate was expired.
- 24 A. Yes.
- 25 Q. And then further down it says "Current plate number,"

1 and then it says "Issue date," "Valid thru 11152015."
2 A. Yes.
3 Q. So that means it was expired in 2015.
4 A. Yes.
5 Q. Were you present for the search of the vehicle?
6 A. Yes.
7 Q. Did you search the vehicle?
8 A. I believe I did.
9 Q. Tell me how that occurred.
10 A. I remember a K9, Officer Dean doing an exterior
11 sniff. I remember -- may I refer back to my
12 supplement?
13 Q. Yes, of course.
14 A. Let me find it.
15 Q. Yeah, it's 6 and 7.
16 A. (Witness reviews document.) So as Mr. Harris had
17 stated in his interview, the driver door was
18 unlocked. I indicated that the rear driver's side
19 door and both passenger-side doors were locked.
20 I'm sorry. What was your question again?
21 Q. What actually happened in the search if the two rear
22 doors were -- what -- what did you do?
23 A. So ended up opening the doors; you know, having to
24 physically reach in to unlock the other doors. I
25 indicated and I -- I remember it today, the -- the

- 1 smell of cocaine when you opened the door.
- 2 Q. What does cocaine smell like?
- 3 A. Cocaine.
- 4 Q. Okay. What -- can you describe that at all?
- 5 A. No. It's a chemical smell, but it's cocaine. It's
- 6 very unique. It --
- 7 Q. It's distinct from fentanyl or heroin or --
- 8 A. Very much so.
- 9 Q. Okay.
- 10 A. It's -- yes.
- 11 Q. Okay.
- 12 A. The rear armrest is where I located suspected cocaine
- 13 and some digital scales. I remember not being able
- 14 to get into the trunk through normal means. And I
- 15 believe we had SRT members pry open the trunk.
- 16 Q. Did you conduct the search of the back of the car,
- 17 the backseat, by yourself?
- 18 A. I don't remember.
- 19 Q. You don't remember if other officers were present?
- 20 A. Well, there were other officers present, but I don't
- 21 remember who --
- 22 Q. If they were physically inside the vehicle.
- 23 A. No, I don't -- I don't remember.
- 24 Q. So what you did is you opened up the front door, then
- 25 you reached over, opened -- pulled the lock up and

1 opened up the back door?

2 A. I believe so.

3 Q. And in the backseat in the armrest, that's where you
4 located cocaine.

5 A. I believe so.

6 Q. And did you have to lift up the armrest?

7 A. I don't remember if it was inside the armrest or if
8 it was an armrest that folded down and it was in that
9 compartment. I don't -- I don't remember. I just
10 remember that being the general area it was.

11 Q. But -- and then at some point you tried to go in the
12 trunk.

13 A. Yes.

14 Q. And did you say you had to force open the trunk?

15 A. If I remember correctly, SRT members forced open the
16 trunk.

17 Q. Were you present for that?

18 A. I think so.

19 Q. Well -- okay. I mean, you state that in the report.
20 You state the trunk of the -- "The trunk was broken.
21 The trunk of the vehicle had to be" --

22 A. Yes.

23 Q. -- "forced open."

24 A. Correct.

25 Q. Is that accurate?

1 A. That sounds -- sounds accurate, yes, sir.

2 Q. Now, are you aware -- well, can you go to Exhibit T?

3 I think you have it. It's a supplemental report.

4 MR. JONES: You're talking about Price.

5 MR. RUBERT-SCHEWEL: Yeah.

6 A. I got it.

7 BY MR. RUBERT-SCHEWEL:.

8 Q. And this report was reviewed by you.

9 A. Yes.

10 Q. And let's see here, before I get my stuff out of
11 order. It starts with -- well, the one I'm looking
12 at starts with Cannon Rebel EOS T6i camera. Is that
13 what yours starts with?

14 A. Yes, sir. Is this a two-page supplement?

15 Q. It is.

16 A. 477, 478?

17 Q. Yeah. I'm just looking at it on Exhibit R --

18 A. Okay.

19 Q. -- but I know that they're identical -- or I believe
20 they're identical.

21 MR. JONES: I'm sorry, identical to --

22 MR. RUBERT-SCHEWEL: To -- to the supplement.

23 MR. JONES: Okay.

24 MR. RUBERT-SCHEWEL: Yeah.

25 BY MR. RUBERT-SCHEWEL:

1 Q. So do you see further down where she discusses
2 searching the home and finding a set of Cadillac
3 keys?

4 A. Yes.

5 Q. And where she says:

6 "In the process of searching this home, entry
7 was finally made into the trunk of the
8 Cadillac using a set of keys that had been
9 located hanging on the master bedroom door."

10 A. Yes.

11 Q. "I left the inside of the residence to take a photo
12 of the keys for evidence purposes. Photos were also
13 taken of the inside of the trunk; however, no items
14 were recovered from the trunk."

15 So just to be clear, Victoria Price says she
16 searched -- "that the home was searched and entry was
17 finally made into the trunk of the Cadillac using a
18 set of keys that had been located hanging on the
19 master bedroom door."

20 A. That's not correct.

21 Q. That's inaccurate.

22 A. Correct.

23 Q. When you reviewed her report, did you tell her that?

24 A. No.

25 Q. Why not?

1 A. I don't think so. I may not even completely read it,
2 but it is inaccurate.

3 Q. Well, you -- can I -- can I see the report, please?

4 A. Sure.

5 Q. Just the top of it. At the top of it, it says
6 supervisor Kyle Marsh, review date February 22nd,
7 2018, but you're telling me today that although it
8 says you reviewed it, you may not have reviewed it.

9 A. Reviewed it meaning approved it. I -- I most
10 definitely did with it having my credentials for --
11 for supervisor. But reading it line for line, it's
12 very possible I didn't.

13 Q. Okay. So you're saying that it's your practice
14 sometimes to approve documents that you don't
15 actually read.

16 A. Sometimes, yes, especially from someone like this.

17 Q. What does that mean?

18 A. That as an evidence custodian, her -- she would
19 submit more supplementary reports than pretty much
20 any other detective. There would be some one-liners
21 of -- of a generic paragraph of "I removed item X
22 from evidence to process it, photographed it." I
23 mean, a lot of times they were, you know, pretty --
24 pretty generic.

25 Or I could have just missed it. I don't know.

1 But I definitely did approve it. But I will say the
2 -- it's an assumption that she was misinformed
3 because the keys did not open the trunk of that
4 Cadillac. It -- I'm fairly confident it had to be
5 forced open. But, yeah.

6 Q. Okay. And if we can go back to your statements on
7 page 6 of Exhibit R and page 7 of Exhibit R. So
8 eventually you asked Mr. Harris if he had a key to
9 the vehicle.

10 A. Yes.

11 Q. And at that point I presume you -- you wanted the key
12 to try and get into the trunk?

13 A. I believe so.

14 Q. And you walked to the northernmost bedroom in the
15 house --

16 A. Yes.

17 Q. -- and in that bedroom there was a key rack.

18 A. I can't remember if it was a hook or a rack, but it
19 was right by the master bedroom door.

20 Q. Was it inside the bedroom?

21 A. I don't remember if it was on the door or right
22 behind the door. I do not remember. But I just
23 remember it being right there by the door, on the
24 door, in the master bedroom.

25 Q. Okay. Well, in your report, you say:

1 "Mr. Harris walked me into his home in the
2 northernmost bedroom to a hanger on the wall
3 and provided me a key that was hanging from
4 this location."

5 So in this statement you say in the
6 northernmost bedroom.

7 A. Correct.

8 Q. So you're saying that could be inaccurate.

9 A. No. I believe it was behind the door. I just
10 couldn't remember without reading that if it was
11 actually, like, on the back of the door, so the
12 door's open, it's right here; or if the door's
13 closed, it's on the wall. I -- I -- I just can't
14 remember.

15 Q. And earlier you stated that it was significant to you
16 for finding probable cause that the key was located
17 in his bedroom.

18 A. It was a piece of it, yes, sir.

19 Q. Okay. Did any other officers go with you?

20 A. I don't remember. The house would have still had
21 quite a few officers in it.

22 Q. And you took these keys outside to the Cadillac?

23 A. Yes, sir.

24 Q. And you used them to open the doors to the Cadillac?

25 A. Yes, sir.

1 Q. And you also used them -- you got in the car seat and
2 you used them to turn the ignition.

3 A. Yes, sir.

4 Q. And when you turned the ignition, did that also --
5 did that also work the locks? Is it one of the cars
6 where when you turn the ignition the locks come on
7 and up?

8 A. It's -- I do remember it having electronic locks and
9 windows, but there was no battery in the car, so if
10 you turn the ignition, it just unlocked the ignition.
11 It didn't do anything.

12 Q. Well, in your statement you say:

13 "These keys did, in fact, turn the ignition
14 and operated the locks on the doors."

15 (The sound of a train passing was heard.)

16 A. No, no, no. The key turned it. So you've got a --

17 MR. JONES: Can we wait for just a half a
18 second until the train goes by?

19 (Brief pause.)

20 MR. JONES: I think you're probably good now.

21 We can hear. You're good?

22 COURT REPORTER: Yes, thank you.

23 MR. JONES: Okay.

24 A. So the square key turns the ignition. The round keys
25 work the locks. What I wrote does not mean I turned

1 the ignition and then you could work the locks. It
2 was -- the square key turned the ignition and the
3 other keys would work the lock.

4 BY MR. RUBERT-SCHEWEL:

5 Q. Okay. So -- I see.

6 A. Yeah.

7 Q. Okay. But you did put the square key -- one of the
8 square keys into the ignition and it turned the
9 ignition.

10 A. Yes.

11 Q. Okay.

12 A. And again, turned it to the "on" position. Didn't
13 turn it on.

14 Q. Got it. All right. I'm going to show you -- and I'm
15 sorry that this is a picture. It's on my laptop.
16 And this is -- we'll mark this as Exhibit W.

17 MR. JONES: And are you going to e-mail that
18 to the court reporter afterward --

19 MR. RUBERT-SCHEWEL: I can, yes.

20 MR. JONES: -- just so we --

21 MR. RUBERT-SCHEWEL: Yeah, yeah. And we'll --
22 we -- I'll -- I'll need to -- we need to
23 turn this over to you. I mean, it's the
24 pictures I took in evidence --

25 MR. JONES: Uh-huh.

1 MR. RUBERT-SCHEWEL: -- but I need to send
2 these to you also.

3 MR. JONES: Yeah.

4 (Plaintiff's Exhibit W was identified.)

5 BY MR. RUBERT-SCHEWEL:

6 Q. So this is Exhibit W. And I'm just going to come
7 stand over here.

8 A. You're fine.

9 Q. Do you recognize these keys?

10 A. They look familiar. They look like the keys that
11 were seized, but I'm not a hundred percent certain.

12 Q. Okay. And from looking at these keys today, do you
13 know which one of these keys operated the locks on
14 the door?

15 A. I don't.

16 Q. Do you know which one of these keys turned the
17 ignition on?

18 A. This is not going off of what I did that day as much
19 as it is just what I know about keys. And I believe
20 one of these two with the -- the square in it that
21 are, like, sensors were the ones -- that was one of
22 the ones that turned the ignition. I believe.

23 Q. Okay. But you don't have any independent
24 recollection as you sit here today.

25 A. I -- I don't -- don't remember.

- 1 Q. Okay. And there's not any other keys in addition to
2 those that you recall using.
- 3 A. Not that I remember.
- 4 Q. Okay. They were all on a single key chain.
- 5 A. Best I remember.
- 6 Q. Did any officers observe you use the key to open the
7 doors?
- 8 A. I don't know.
- 9 Q. Okay. Well, Officer Heaton -- was Officer Heaton the
10 K9 --
- 11 A. No.
- 12 Q. -- officer? Who was the K9 officer?
- 13 A. Dean.
- 14 Q. Dean was present at least for the initial sniff and
15 search, right? And I think Dean in his report says
16 that he did not use the dog to go in 'cause he was
17 worried about exposure from cocaine.
- 18 A. That sounds right.
- 19 Q. But you're -- you -- you don't think Dean was there
20 any longer when you opened the door.
- 21 A. Oh, I don't know.
- 22 Q. Okay. So as far as --
- 23 A. He could have been.
- 24 Q. So your statement is that to your knowledge no
25 officers -- you don't recall if any officers

1 witnessed --

2 A. I don't --

3 Q. -- either of these events.

4 A. Either of which events?

5 Q. You opening the door. Do you recall if any officers
6 witnessed you --

7 A. I don't -- I don't remember.

8 Q. And do you recall if any officers witnessed you turn
9 the ignition?

10 A. I don't remember.

11 Q. But you did later share that information with
12 Officer Perry?

13 A. Yes.

14 Q. Okay. Sometime after you found the drugs, you had a
15 conversation with Lee Harris, Sr.?

16 A. I believe so.

17 Q. And just to be clear, you were -- this -- this is
18 not -- you were not present for the conversation that
19 was recorded by Jason Perry.

20 A. Not when it was going on, no.

21 Q. Have you -- but you've since heard that recording.

22 A. I have.

23 Q. Did you hear that recording on the day Mr. Harris was
24 arrested?

25 A. I don't remember. I remember Detective Perry

1 summarizing what was said, but I don't remember if I
 2 heard it that day or not.

3 Q. Where did your conversation with Mr. Harris occur?

4 A. I believe in the yard.

5 Q. Okay. So --

6 A. I don't -- I'm not sure.

7 Q. -- he wasn't in the house? He'd then been taken out
 8 to the yard?

9 A. Well, he was interviewed by Perry in the car --

10 Q. Right.

11 A. -- in Detective Perry's car.

12 Q. Okay.

13 A. So that conversation could have taken place there.
 14 I'm -- I'm not sure where we spoke at.

15 Q. Okay. And you asked Mr. Harris if he owned any
 16 firearms.

17 A. Yes, sir.

18 Q. Did any other officers witness this conversation?

19 A. I do not know.

20 Q. Did you record your conversation with Mr. Harris?

21 A. No, sir.

22 Q. Why not?

23 A. I didn't really have a reason to. I wasn't really
 24 interviewing him. And we didn't speak very long.

25 Q. Well, I mean, Officer Perry recorded his

1 conversation, right?

2 A. Yes.

3 Q. So you're saying Officer Perry had a reason to, but
4 you didn't.

5 A. Yes.

6 Q. And -- and in your conversation with Mr. Harris, he
7 told you that he owned a number of different
8 firearms.

9 A. I believe so.

10 Q. Including a few rifles?

11 A. Yes, sir.

12 Q. A handgun?

13 A. I believe so.

14 Q. And you state in your report that Mr. Harris told you
15 that his son, when he stayed there, stayed in the
16 southernmost room of the house.

17 A. Yes, sir.

18 Q. And you state in your report that he also told you
19 that any weapon found in his son's room would be his
20 son's weapon.

21 A. I don't recall. (Witness reviews document.)

22 Q. It's at the very --

23 A. Yes. Yes.

24 Q. That's accurate.

25 A. Correct.

1 Q. And do you -- as you sit here today, do you recall
2 that -- him -- him stating that to you?

3 A. I believe so, yes.

4 Q. Now, one of the other indicators of probable cause
5 that you gave when I asked you about the facts that
6 led to your probable cause determination were that
7 Mr. Harris had been seen at different drug locations
8 interacting with known drug dealers.

9 A. Uh-huh. Yes, sir.

10 Q. And this was specifically at 811 West New York
11 Avenue.

12 A. Yes, sir.

13 Q. Are you aware that Mr. Harris's mother-in-law,
14 Ms. Dickerson, lives next-door to that location?

15 A. Yes. Next-door, yes, sir.

16 Q. Next-door, yeah. And you -- you still thought it was
17 odd or a factor to be considered in probable cause
18 that Mr. Harris was present at the next-door address?

19 A. Very much so.

20 Q. How come?

21 A. No one had any business being at 811 West New York
22 Avenue. It was an abandoned property that was solely
23 used for selling drugs. Mr. Harris had no business
24 being there.

25 Q. Had you seen his son there?

1 A. Yes.

2 MR. RUBERT-SCHEWEL: We've just got to look at
3 this for one second. You know, I think
4 what we should do is let's take a
5 ten-minute, a five-minute break. Let me
6 talk to my client and then see if we have
7 anymore questions.

8 MR. JONES: Okay.

9 MR. RUBERT-SCHEWEL: And then we should be
10 done, unless you're going to have any.

11 MR. JONES: Very minimal, if any.

12 MR. RUBERT-SCHEWEL: So let's just step
13 outside.

14 MR. JONES: Okay.

15 (Recess from 2:21 p.m. to 2:34 p.m.)

16 BY MR. RUBERT-SCHEWEL:

17 Q. I just want to ask you a little bit about your
18 training and experience that you had related to
19 investigations or drug investigations.

20 A. Yes, sir.

21 Q. Have you ever received training or in your experience
22 do -- where -- indicating that drug traffickers mark
23 their products or do anything to indicate that it is
24 their product?

25 A. Yes.

1 Q. And how would they do that?

2 A. Well, I -- I received training. It was interdiction
3 -- highway interdiction training years ago. During
4 that training it was mentioned that some cartels, if
5 you will, would -- would label a -- a narcotic,
6 whether it be a stamp or sticker or something to that
7 effect.

8 Q. Okay. And narcotics are typically packaged, right?

9 A. Yes.

10 Q. And what are the different ways they're packaged?

11 A. There's many different ways they can be packaged.
12 I've seen, you know, plastic used, tin foil, vacuum
13 seal. A number of ways.

14 Q. Okay. I'm just going to direct you to your statement
15 that's in your supplemental report on page 7 where
16 you state -- I'll just start with: "Lying in the
17 rear floorboard was packaging material." Do you see
18 that? And then up --

19 A. Where am I at?

20 MR. JONES: Up -- up near the top.

21 BY MR. RUBERT-SCHEWEL:

22 Q. Sorry, yeah, it's about seven lines down, eight lines
23 down towards the middle.

24 A. Yes.

25 Q. "Lying in the rear floorboard was packaging material

1 that had white residue in it," comma, "and a strong
2 odor of cocaine. One of the packages was black in
3 color and had the appearance to have once contained a
4 brick of substance consistent with a kilo of
5 cocaine."

6 So in the car you found -- in addition to
7 cocaine you also found packaging.

8 A. Yes, sir.

9 Q. And that packaging, to you, indicated that the
10 packaging had once held cocaine.

11 A. That package, yes.

12 Q. And why -- why did it indicate that to you?

13 A. Smell, the manner -- so sometimes you could have a
14 vacuum-sealed or a kilo of cocaine wrapped in plastic
15 and then coated with axle grease and then taped, you
16 know. I don't recall exactly, without looking at
17 photos, exactly what this packaging was, but it did
18 have a brick shape about the size of a kilo of
19 cocaine or heroin would be. That's all I can really
20 remember right off the top of my head.

21 Q. Have you ever identified drug dealers or used the
22 fact in a case that drug dealers used the same type
23 of packaging throughout their trafficking work?

24 A. I'm not sure.

25 Q. And I say "work" loosely. Have you ever had a case

1 where a drug dealer marked their drugs in a way or
2 packaged their drugs in a way where you could say "I
3 know that that was that drug dealer's drugs or that
4 distributor's drugs"?

5 A. I don't recall.

6 Q. Okay. Do you think that's possible?

7 A. Yes.

8 Q. Okay. Do you recall an individual named Stanley
9 Harris?

10 A. No, sir.

11 Q. Do you recall -- well, I'll just tell you. Stanley
12 Harris is Lee Harris, Sr.'s, brother. Stanley Harris
13 called you to ask you about the investigation. Do
14 you recall him calling you or speaking with him on
15 the phone?

16 A. I don't recall.

17 Q. Okay. When you -- when he called you, you told him
18 that you were the lead detective on the case. Is
19 that not something that you would say? I'm basing
20 that on how you looked when I just asked you that
21 question.

22 A. I wouldn't think so.

23 Q. Okay. Why not?

24 A. Because I supervise the division, but it wasn't Kyle
25 Marsh's case, per se.

1 Q. Okay.

2 (Brief pause.)

3 Q. Did you speak to Carl Colasacco at 803 North
4 Sycamore --

5 A. I'm sure I did.

6 Q. -- on the day that you --

7 Okay. Did you tell Carl Colasacco that you
8 were going to arrest Lee Harris, Sr., and charge him
9 with possession of the narcotics unless he informed
10 on his son?

11 A. I don't remember.

12 Q. Well, is it possible that you could have said that?

13 A. It's possible.

14 Q. And in your mind you think that that would be within
15 your discretion to do?

16 A. To talk with Carl?

17 Q. No, to -- to -- to tell Carl that you are going to
18 prosecute Lee Harris, Sr., unless he becomes an
19 informant for you or informs on his son.

20 A. Never considered Mr. Harris being an informant.

21 Q. Well, I don't mean an informant. I mean, my original
22 question was did you tell Carl Colasacco that you
23 were going to prosecute Harris Senior and charge him
24 with possession of narcotics unless he informed on
25 his son for you? I don't mean as a -- as a -- as a

1 -- in the strict word of informant. I just mean if
2 he told you information about his son.

3 A. I don't remember saying that.

4 Q. But you're saying it's possible you could have.

5 A. It's possible.

6 Q. Was that true? If -- if Lee Harris, Sr., when you
7 asked him to or when Officer Perry asked him to, had
8 given you information about his son and said, "Yes,
9 my son is a drug dealer; yes, I know he's involved in
10 all these things; yes, this is what he's done," would
11 you have prosecuted him or would you have charged him
12 with these crimes that you charged him with?

13 A. I didn't need Mr. Harris, Sr., to tell me that his
14 son was a drug dealer. If he would have said that
15 the drugs found in that Cadillac belonged to his son,
16 then, yes, his son probably would have been charged
17 with those drugs in addition to Harris Senior.

18 Q. You're saying they both would have been charged.

19 A. Most likely.

20 Q. So there was no universe where him providing you any
21 information was going to stop him from being charged.

22 A. It would depend on what that information was.

23 Q. So you're saying it is possible.

24 A. It is possible.

25 Q. Well, what if he had told you that Lee Harris, Jr.,

1 had placed those drugs in the Cadillac?

2 A. It would be possible.

3 Q. That could have changed your mind as to whether or
4 not there was probable cause to charge Senior?

5 A. No. Wouldn't change my mind whether or not probable
6 cause was there to charge Senior, but it could have
7 changed my mind into actually charging Senior.

8 Q. Okay. I'm going to show you what I showed you
9 previously, which you said was officers' notes, and
10 -- I'm sorry, I have it -- I have it right here.

11 A. Oh.

12 Q. And I will hand it to you in one second. I just want
13 to make sure I have the right exhibit. Okay. I
14 think it's P. So I'm going to hand this to you and
15 I'm just going to ask you: Exhibit P, what -- can
16 you just read what's -- out loud what's on the very
17 top?

18 A. OCA 2018 00199.

19 Q. And then can you read what's directly below that?

20 A. Case supplemental information, the date, and then it
21 says "wood surveillance at 803 North Sycamore Street,
22 Aberdeen."

23 Q. And can you now go to the -- sorry. Can you now go
24 to the third paragraph that starts on "At or around
25 1509 hours"?

1 A. Yes.

2 Q. And can you read that out loud for the record?

3 A. "At or around 1509 hours Lee Marvin Harris, Jr.,
4 arrives in a white in color Toyota Venza at the house
5 stated above; Calvin Fox was also in this same
6 vehicle as a right" -- or "front right passenger.
7 Lee Junior, wearing a black jacket with a hood that
8 was pulled over his head, gets out of his car and
9 goes to the right side of the home, near a silver in
10 color enclosed trailer. He then approaches a vehicle
11 covered with a blue tarp on it. He is over at this
12 vehicle approximately two to three minutes. Lee
13 Junior then goes inside the home using the front
14 door, for one to two minutes, comes back out of the
15 house and gets back into the Venza."

16 Keep going?

17 Q. That's -- that's fine. Thank you. And -- and just
18 to be clear, this note was written on January 31st,
19 2018.

20 A. I don't know if that's when it was written or if that
21 is the date that --

22 Q. The surveillance occurred.

23 A. Yeah.

24 Q. It is. It's the date on which the surveillance
25 occurred. You're right. I'm not -- I don't know the

- 1 date it was written, but it involved -- and it
2 actually says, "I, MPO Lowery, and Officer Reilly."
3 A. Who's -- Officer Reilly is a Aberdeen detective.
4 Q. That paragraph that you just read out loud and
5 combined with knowing what you know about Lee Harris,
6 Junior, does that indicate to you some sort of drug
7 activity?
8 A. It's possible.
9 Q. And drug activity related to the Cadillac with the
10 cover on it?
11 A. It says a blue tarp.
12 Q. On top of the Cadillac parked in the rear of the
13 yard. Sorry. "He then approaches a vehicle" --
14 A. I don't see Cadillac anywhere.
15 Q. "He then approaches a vehicle covered with a blue
16 tarp on it."
17 A. I don't remember a blue tarp. There wasn't a blue --
18 Q. Well --
19 A. -- tarp that I recall on the Cadillac.
20 Q. You don't recall a tarp being on the Cadillac?
21 A. A cover, yes. A tarp, no.
22 Q. Okay.
23 A. Now, there could have been.
24 Q. Okay. So for the purposes of my question, let's
25 presume that is the Cadillac, okay?

1 A. Okay.

2 Q. Your statement is still -- and -- and -- that this
3 happened three weeks before you executed your search
4 warrant. Your statement is still what you said
5 earlier, that this information seeing Junior go
6 towards the car, be over the car for two to three
7 minutes, whatever he did, that does not contribute at
8 all to your probable cause determination to charge
9 Harris Senior.

10 A. No.

11 Q. It doesn't.

12 A. No.

13 Q. How come?

14 A. Well, again, going back to February 20th, 2018,
15 Mr. Harris, according to what Detective Perry told me
16 then and I know to be true now, or now being after
17 February 20th, listening to the audio recording, he
18 knew all the ins and outs of the Cadillac registered
19 to him, and that's where the drugs were found.

20 Q. I know, but you had information that his son, who was
21 a known drug dealer, had gone to the car three weeks
22 prior.

23 A. If I'm not mistaken, in this it states that Junior
24 and Senior speak --

25 Q. Okay.

- 1 A. -- which goes against what --
- 2 Q. Well, I'm --
- 3 A. -- Harris Senior being --
- 4 Q. First off --
- 5 A. -- truthful in his statement.
- 6 Q. It goes against Senior being truthful. Okay. So one
- 7 of the one -- of the reasons you claim you arrested
- 8 him was because you thought that he was untruthful,
- 9 right?
- 10 A. He was arrested because we had probable cause to make
- 11 that arrest.
- 12 Q. Right, and one of your indicators was that he was
- 13 untruthful. And I -- I'm -- you've already said to
- 14 me that you hadn't seen this document.
- 15 A. I don't remember seeing this document.
- 16 Q. And -- and -- well, that's -- you said to me that you
- 17 had not seen this document and that you did not know
- 18 about this. When I asked you if you knew that Junior
- 19 had gone to the car prior, you said you had never
- 20 heard that information.
- 21 A. I don't -- I don't remember that.
- 22 Q. Okay. And -- and that's what I'm saying. I'm -- I'm
- 23 saying that's what you told me earlier. Now, so this
- 24 is information that at the time you made your
- 25 probable cause determination you stated you did not

1 know it.

2 A. What do you mean?

3 Q. When you and Perry met at Harris Senior's home, you
4 said you knew these facts, right, and that's what led
5 to your probable cause determination? One of the
6 facts that you did not know of was this. You -- you
7 were not aware of this surveillance.

8 A. I was aware that they conducted surveillance at
9 Senior's home.

10 Q. But you were not aware of this specific incident with
11 Lee -- I think we agree here. You were not aware of
12 this specific -- you hadn't reviewed this note, you
13 had never seen this document before. You were not
14 aware of this.

15 A. I don't remember if I was or wasn't.

16 Q. Okay. Well, earlier you said you were not.

17 A. I don't remember specifically seeing this document.
18 Now, was I ever told about the contents of it? I
19 don't remember.

20 Q. But either way, to you, it's entirely insignificant.

21 A. I don't understand your question.

22 Q. Well, it's what I've been asking you --

23 MR. JONES: Well, insignificant to what?

24 BY MR. RUBERT-SCHEWEL:

25 Q. To your probable cause determination.

1 A. Yes.

2 Q. Okay. Are you aware that the Court of Appeals --
3 well -- for North Carolina has defined incriminating
4 factors that go to constructive possession of drugs
5 or a weapon or other items?

6 A. I'm -- I'm not sure your question -- am I aware of
7 what?

8 Q. That there's a case where the Court of Appeals in
9 North Carolina has said that there's a six-factor
10 test to look at to determine if there was -- if
11 someone constructively possessed an item.

12 A. I'm not aware.

13 Q. And that those factors are proximity, if they were
14 the only person who could have placed the contraband
15 in that position; if the person acted nervously; if
16 the person had some -- controlled it, resided, or
17 regularly visited the premises; if the contraband was
18 in plain view; or if the person possessed a large
19 amount of cash. And you stated you're not aware of
20 that, right?

21 A. That specific case? No, I'm not aware of that
22 specific case, no.

23 Q. Are those factors that you consider when determining
24 whether or not you have probable cause to arrest
25 someone for possession?

1 A. Are those the types of factors considered?

2 Q. Yes.

3 A. Yes.

4 Q. Okay.

5 MR. RUBERT-SCHEWEL: I have no further
6 questions.

7

8 EXAMINATION BY MR. JONES

9 Q. Captain Marsh, I -- I just have a -- a couple of
10 things. I said I wasn't going to do that. Couple of
11 things, though, that I want to go over.

12 One of the areas you were asked about was
13 about reporting -- your reviews of reporting
14 inaccurate statements that are in the reporting, and
15 I think your testimony was something to the effect of
16 if there are inaccuracies in there, one, you don't
17 change them; but two, sometimes you let them be and
18 sometimes you let -- you -- you tell the person to --
19 to change it. Is that accurate?

20 A. Yes.

21 Q. Okay. Is it your practice to have somebody correct a
22 report if you find something that is pertinent to the
23 investigation or important to the investigation that
24 is wrong in the report?

25 A. If found, yes.

1 Q. All right. With regard to the review of -- sorry, is
2 that Officer Price?

3 A. She was a crime scene technician.

4 Q. -- Crime Scene Technician Price's reports, are there
5 other -- can -- can you explain the reason that you
6 may not have reviewed that -- the entirety of that
7 report?

8 A. I don't recall. There were a lot of reports. And, I
9 mean, I believe there were at least four incident
10 reports that came out of that day, being February
11 20th. I mean, it's highly likely that I didn't read
12 every single line of every report that came through.

13 Q. Was there anything inaccurate or pertinently
14 inaccurate that you found in any of the reports that
15 you reviewed?

16 A. Later on with Price's report, yes, but I don't
17 remember when that was discovered.

18 Q. Sure. And her report was contained within your
19 supplemental report as well, correct? And strike
20 that.

21 Her report was -- was placed together
22 alongside your supplemental report of the same
23 information, correct?

24 A. Yes.

25 Q. And that was provided to now Judge McSweeney. Is

1 that correct?

2 A. Yes.

3 Q. As part of the prosecution summary?

4 A. Yes.

5 Q. Okay. The test that Mr. Rubert-Schewel just asked
6 you about for construction -- constructive
7 possession, do you know if that is the standard for
8 arrest, if it is the standard for probable cause, if
9 it is the standard for a conviction with regard to
10 constructive possession?

11 A. Do I know?

12 Q. Sure.

13 A. No. My feeling is that it goes towards conviction
14 and not towards probable cause, but I don't know for
15 sure.

16 Q. Sure.

17 MR. JONES: That's all I've got.

18 (The taking of the foregoing deposition was
19 concluded at 2:56 p.m. on September 20, 2022.
20 Signature was reserved.)

21

22 * * * * *

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25

WITNESS CERTIFICATE

I have read the foregoing pages, 1 through 194, inclusive, and find that they contain a correct transcription of the answers made by me to the questions therein recorded, with the exception of _____ corrections as listed on a separate sheet of paper and incorporated into this record.

Signed this _____ day of _____
2022.

KYLE A. MARSH

Sworn and subscribed before
me this the _____ day of
_____ 2022.

Notary Public

My Commission Expires: _____.

REED & ASSOCIATES
MATTHEWS, NORTH CAROLINA 980.339.3575

ERRATA SHEET

Please indicate any corrections to your deposition on this sheet of paper, giving the page number, line number, change and reason for the change, and return this form and the signature page to: **Reed & Associates, 2401 Whirlaway Court, Matthews, NC 28105, or email to Vreed@carolina.rr.com**

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MATTHEWS, NORTH CAROLINA 980.339.3575

STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, WANDA B. CONSTANTINO, CVR-CM-M, Notary Public, do hereby certify that KYLE ALAN MARSH was duly sworn prior to the taking of the foregoing deposition, that said deposition was taken and transcribed personally by me, and the foregoing pages constitute a true and accurate transcript of the testimony of said witness.

I do further certify that the parties were present as stated in the caption.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of said action.

I have hereunto subscribed my name this the 23rd day of October, 2022.

WANDA B. CONSTANTINO, CVR-CM-M
Notary Number: 19971130022

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MATTHEWS, NORTH CAROLINA 980.339.3575